



REPUBLIC OF KENYA

EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO.247 OF 2015

(Before D. K. N. Marete)

PHILIP KIPKOECH KOMEN.....APPLICANT

VERSUS

LABOUR OFFICE NANDI COUNTY.....DEFENDANT

UNIVERSITY OF EASTERN AFRICA BARATON.....INTERESTED PARTY

JUDGMENT

In this cause is an undated Memorandum of Claim filed on 1st October, 2015. It is accompanied with a Verifying Affidavit sworn on some undisclosed/undisclosed date. It is also accompanied by a Supporting Affidavit sworn in the same manner but all filed with the claim.

The claim is filed under an application by way of Notice of Motion dated 1st October, 2015 and brought to court under a Certificate of Urgency of even date.

The Interested Party on 6th November, 2015 files a response to the claim praying that it be dismissed with costs. On 30th November, 2015 she files a Replying Affidavit to the application dated 1st October, 2015.

The Defendant on 8th December, 2015 files her Grounds of Opposition dated 11th November, 2015 and avers that the application before court is an abuse of the process of court, vexatious and bad in law. She prays that it be dismissed with costs.

The matter came to court variously until the 26th May, 2016 when the claimant, who was the only one in court agreed to a disposal of the matter on the basis of the parties pleadings. This was accepted by court.

The claim and application by the claimant are muzzled up. They are indeed desolate. These raise various claims against the Interested Party who is alleged to have terminated his employment. This is as follows;

1. *That the court be pleased to view the content of Ref ML/NDI/LAB.1/67 in that the decree was issued to compromise justice marked PKK1.*
2. *That the court be pleased to order interested party to produce my employment documents as per defendant letter Ref No. ML/NDI/LAB.1/59 because interested party never produce up date as, per contents of the letter attached herein marked PKK2.*

3. *That the court be pleased to find interested party crimes committed as per 2007 section 20, 51 (130, 17, section 71, 5 (5), 16 (4), 19 (5), 25 (1) and defendant be liable of protecting interested party contrary to article 47 rule 1 and rule 2.*
4. *That the court be pleased to instruct interested party to pay under payment for 30 months worked for 30 months x 8400= 252,000/=.*
5. *That the court interested party to pay all NSSF arrears from March 2010, 21 months x 400= 8,400/=.*
6. *That the court be pleased to order the interested party to pay service pay worth Kshs. 21,504/=.*
7. *That the court be pleased to confirm that, my termination was unfair and to determine the cost of damages to be paid.*
8. *That the court be pleased to order for certificate of service.*
9. *Interested party to pay house allowance Kshs. 2,000 x 33 months = Kshs. 66,000/=.*
10. *That all increment made in every year at labour day be paid.*
11. *That the cost of this application be provided for.*
12. *Any other and/or receive the honourable court may deem just and expedient to grant.*

The claimant in support of the claim annexes the following documents;

1. *Letter of invitation to a conciliation meeting by the Labour office dated 25th February, 2013.*
2. *Demand letter dated 14th April, 2014.*
3. *Letter of Notification of Trade Dispute by Ministry of Labour and Human Resource Development dated 11th February, 2013.*
4. *Trade dispute letter dated 18th March, 2013.*
5. *A letter to the conciliator dated 17th April, 2013.*
6. *Nandi County Human Rights Watch letter dated 4th December, 2012.*
7. *NHIF Member Data Summary.*
8. *Complaint letter by Philip Kipkoech dated 19th June, 2015.*
9. *NSSF statement of account.*
10. *Cheque No. 048932 for payment of Philip Koech Komen termination benefits.*
11. *A letter of termination of three months contract dated 2nd December, 2011.*

The Interested Party denies the claim and submits that the issue of termination dues owing to the claimant was amicably settled *inter parties* at the Labour office, Nandi, with a payment of Kshs. 62, 292.00 to the claimant. The claim as filed is therefore untenable. This is further enunciated in the Replying Affidavit of the respondent aforesaid.

The Defendant denies the claim as follows;

1. *That the instant application does not disclose and/or capture any reasonable cause of action as against the defendant whatsoever.*
2. *That the instant application is pre-mature, misconceived, incompetent and otherwise legally untenable.*
3. *That the application herein is devoid of merit.*
4. *That the application is an abuse of court process, vexatious, bad in law and ought to be dismissed*

forthwith.

The respondent/defendant in answer to the accusations of *inter alia*, complicity with the Interested Party in denying the claimant his constitutional rights annexes the following list of documents in answer;

1. *Notice from the Nandi County Labour office informing University of Eastern Africa-Baraton of Philip Kipkoech Komen's complaint,*
2. *Letter to the University of Eastern Africa-Baraton inviting them to a joint meeting at the Nandi County Labour office.*
3. *Payment agreement dated 12th March 2013,*
4. *Payment acknowledgment letter for receipt of Cheque No. 048682 dated 19th March, 2013 and*
5. *Cheque No. 048932 for the payment of Philip Kipkoech Komen termination benefits replacing cheque No. 048682 that was returned.*

She also files witness statements by Ondari Bwana and C.I Opalakadi, County Labour Officer as witnesses who clearly set out the eventualities belying this cause.

I have scrutinized at the claim and the various responses by the parties. I have also looked at the submissions by the claimant/applicant dated 29th May, 2016. This claim is as un certain as it is hollow. The claimant does not demonstrate any substantive claim for determination. The claimant does not deny the defendant and Interested Party's submission of settlement of the matter at the Labour office, Nandi County. He does not deny acceptance of the amount of Kshs. 62,292/= . There, overall, is no evidence in support of his claim as set out.

I am therefore inclined to agree with the respondent and interested party that this claim is an abuse of process of court, vexatious and out of place. It is premature and does not disclose a reasonable cause of action against the defendant. I therefore dismiss it with an order that each party bears their own costs of the claim.

Delivered, dated and signed this **6th day of June 2016.**

D.K.Njagi Marete

JUDGE

Appearances

Claimant in person

Mr. Momanyi Instructed by Anassi Momanyi & Company Advocates for the Interested Party.

Sara A. M. Aliango, Litigation Counsel, for the Defendant