



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NUMBER 1214 OF 2013
ENG. GEORGE MUTULILI MUIA.....CLAIMANT
VERSUS
UNILEVER EAST & SOUTHERN AFRICA....RESPONDENT
RULING

1. By a Notice of Motion dated 6th October, 2014 the respondent sought an order that the memorandum of claim herein be struck out for want of jurisdiction. The application was based on the grounds that:-

- a. The Respondent herein was employed by Unilever South East Africa (Pvt) Ltd (herein referred to the Company) which is based in Zimbabwe on 1st April 2005 to work as its TPM Manager.
- b. The Contract of employment was performed in Zimbabwe and the Company which was his employer, absorbed all of the claimant's expenses for moving to Zimbabwe from Kenya.
- c. Clause 14 of the said contract provided that any disputes and proceedings arising out of the contract were to be instituted in the Zimbabwean Courts.
- d. Pursuant to the aforementioned clause, the claimant herein initiated proceedings in Zimbabwe after the Company declared him redundant. The Kenya Courts therefore have no jurisdiction to hear and determine the dispute.
- e. In addition, the Respondent herein is not a legal entity and therefore cannot be sued.

2. The application was further supported by the affidavit of one Salome Nderitu who deponed on the main that:-

- a. That the Claimant herein was employed by Unilever Kenya Limited in April 2000 as a Factory Maintenance Engineer. He was later promoted to Chief Engineer in 2001.
- b. That the Claimant on 1st April 2005 was employed by Unilever South East Africa (Pvt) Ltd which is based in Harare, Zimbabwe as its TPM Manager. The claimant together with his family relocated to Zimbabwe where the contract was performed. The Claimant's new employer absorbed all costs related to the claimant's relocation.

- c. That Clause 14 of the Claimant's new contract provided that the Courts of Zimbabwe have exclusive jurisdiction to settle any disputes or matters arising out of the claimants contract of employment. The Kenyan Courts therefore have no jurisdiction to determine disputes arising out of the aforementioned contract.
- d. That the cause herein relates to an employment dispute arising between the claimant and his former employer Unilever South East Africa after the claimant was declared redundant. The cause of action therefore arose out of the contract with Unilever South East Africa. I am aware that the Claimant had initially instituted an industrial claim in East Africa. I am aware that the claimant had initially instituted an industrial claim in the Zimbabwean Courts pursuant to the terms of his employment contract. The claimant is therefore aware that the Zimbabwean Court is the correct forum to hear this dispute and it was incumbent to him to continue to pursue the matter before the labour courts in that jurisdiction.

3. The claimant in his replying affidavit in opposition to the application deponed in the main as follows:-

- a. That it was not true that he was employed by Unilever Kenya Ltd in April 2000 as a Factor Engineer.
- b. That he remained an employee of Unilever Kenya Ltd only that he was posted in Zimbabwe as an expatriate on secondment.
- c. That he was seconded to Unilever Zimbabwe by AMET Regional Group (which stands for Africa Middle East and Turkey).
- d. That clause 14 of the contract dated 1st April, 2005 related only to disputes between myself and Unilever Zimbabwe.
- e. That the dispute in Court here in Kenya relates to his dismissal by the Applicant herein as per the letter of dismissal dated 12th October, 2007.
- f. That in deed the Applicant wrote to him a letter dated 28th August, 2007 in which they informed me that I will continue as their employee.
- g. That from the annexure marked "GMM4" it is clear that the Applicant herein was my employer since Unilever Kenya was under Unilever East and Southern Africa Ltd with its headquarters at Nairobi.
- h. That Kenya Courts have jurisdiction to determine this matter because the Applicant's Headquarters are based in Kenya, Nairobi.
- i. That the matter which was filed in Zimbabwe related to redundancy but not dismissal and in any event I gave instructions for withdrawal.
- j. That Unilever Kenya was part of Unilever East and Southern Africa Ltd whose Headquarters were in Kenya, Nairobi and the Directors of Unilever Kenya were the same directors for Unilever East & Southern Africa Ltd.

4. The Court has considered the depositions in the respondents' and claimants affidavits as well as documents in support of respective parties application and is of the view that the objection is not merited.

5. The letter dated 17th May, 2007 attached to the respondents memorandum of claim reads in part as follows:-

The Unilever businesses in East Africa, South East Africa and UMDSA were consolidated into one organization, namely Unilever East and Southern Africa (ESA). The change had implications to the organizational structures in the members countries and as communicated to you previously, it is the business intention that you take up the role of Projects Manager ESA, based in Nairobi Kenya at W1.2c with effect from the 1st of April 2007. This post is still available for you to take up, in which case the effective date of this appointment would be the 1st of June 2007.

6. The letter dated 28th August 2007 further states as follows:-

We hereby advise that the offer of retrenchment is hereby withdrawn. You remain an employee of Unilever East & Southern Africa. You are laterally transferred to the Kenya office of Unilever South & East Africa, to the position of Projects Manager, Work Level 3A (Personal to Holder). You are to report for duty at the Kenya Office on 1st October 2007

7. From these letters it is evidently clear that the claimant remained an employee of the respondent.

8. Clause 14 relied on by the respondent to dispute the jurisdiction only applied while the claimant was in Zimbabwe however his dismissal which he challenges through this suit was done by Unilever Kenya hence the Court would have jurisdiction to that extent.

9. There is one fundamental issue raised by the respondent in its memorandum of defence to the effect that the claim herein is statute barred. This issue of limitation goes to the jurisdiction of the Court.

10. The claimant herein was dismissed by a letter dated 12th October, 2007 by virtue of section 90 of the Employment Act his claim ought to have been filed within three years next after the dismissal. The claim herein was filed on 1st August, 2013 almost six years after dismissal. The claim therefore is statute barred and for that reason hereby struck out.

11. It is so ordered.

Dated at Nairobi this 27th day of May 2016

Abuodha Jorum Nelson

Judge

Delivered this 3rd day of June 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge