



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO.38 OF 2013

(Formerly High Court Civil Case No.43 of 2007 at Nyeri as Consolidated with Formerly Chief Magistrate's Court Civil Case No. 511 of 2007 at Thika)

JAMES KARIUKI RURIGI.....PLAINTIFF

VERSUS

TROPICAL FARM MANAGEMENT.....DEFENDANT

(Before Hon. Justice Byram Ongaya on Friday, 30th September, 2016)

JUDGMENT

The defendant filed the plaint in civil suit No. 511 of 2007 in the Chief Magistrate's Court at Thika on 28.05.2007 through Jessee Kariuki & Company Advocates. The defendant prayed for judgment against the plaintiff (the defendant in that suit) for:

- a) Kshs.608,650.70.
- b) Costs of the suit.
- c) Interest on (a) at court rates from the date of filing the suit till payment in full.

The plaintiff being the defendant in that suit filed the statement of defence on 14.06.2007 through Charles Kariuki & Company Advocates. The plaintiff prayed for dismissal of that suit with costs.

On his part, the plaintiff filed Civil Case No. 43 of 2007 on 14.06.2007 against the defendant through Charles Kariuki & Company Advocates. The plaintiff prayed for judgment against the defendant for:

- a) Kshs.13,517,063.00 being the principal claim with interest from the date of filing suit to the date of judgment, general and special damages.
- d) Costs of the suit and interest therein.

The defendant filed the statement of defence on 20.07.2007 through Jessee Kariuki & Company Advocates. The defendant prayed that the plaintiff's suit be dismissed with costs.

By orders given on 20.09.2007 the two suits were consolidated and the suit file at Thika transferred to the High Court at Nyeri. The defendant then filed the amended statement of defence and counterclaim on 03.12.2007.

The plaintiff was employed by the defendant by the letter of employment contract dated 01.09.1997. The plaintiff was appointed to the position of Trainee Manager. By letter of 20.07.1998 the plaintiff was given by the respondent a job description for the position of Relief Manager which the plaintiff signed in acceptance on 22.07.1998. The claimant testified that on 30.03.2006 he was promoted to position of Trainee Assistant Group Manager but the contract he last signed was for Relief Manager on 22.07.1998. The plaintiff testified that as at termination of his employment on 10.04.2007, he held the position of Trainee Assistant Group Manager earning Kshs.85,000.00 per month.

On 10.04.2007 the plaintiff testified that he was on leave when the respondent's Human Resources Manager one Grace Gathogo summoned the plaintiff by telephone and upon arrival the said Grace showed the plaintiff the termination letter dated 10.04.2007. The termination letter stated that the defendant had decided to terminate the plaintiff's employment as per provisions of paragraph 8.c and 10.c in the contracts of employment dated 25.11.1998 and 30.03.2006. The termination letter stated that the plaintiff's last day at work was 10.04.2007 and his final dues would be calculated as 10 days salary for April 2007; 3 months' salary in lieu of notice; and 61 outstanding leave. The deductions from the final dues were car loan, other loans, insurance outstanding and PAYE. The termination letter further stated that the claimant's current scheme's retirement benefits would be paid once the relevant cheque was received from Insurance Company of East Africa, ICEA.

The plaintiff's further testimony was that he received the termination letter on 18.04.2007 when he signed to agree to the terms and conditions of notice and termination of his services. The terms the plaintiff signed on 18.04.2007 were that he was to clear the outstanding car loan and other loans with the respondent; he was to organise to return all respondent's property in his custody before departure; and he was to sign to signify agreement to the said terms and conditions of termination. The claimant signed accordingly.

The plaintiff testified that the respondent's Managing Director did not give him the reasons for the termination and he told the plaintiff that the plaintiff's supervisor the Senior Group Manager had not advised that the plaintiff be terminated. The Managing Director further told the plaintiff that the plaintiff had to go home and was to come back after 2 years. The plaintiff's supervisor the Senior Group Manager one Duhah advised the plaintiff to take the termination as a blessing to go and venture in better opportunities. The claimant left and he never took the letter of termination dated 10.04.2007.

The plaintiff admitted owing the car loan Kshs.608,650.70 but it was his case that "mileage" ought to have been deducted. The claimant did not quantify the measure of that mileage. Instead of 3 month's pay in lieu of notice, the claimant testified that he claimed 10 months' pay but he gave no justification for his claim.

The defendant's witness (RW) testified that the plaintiff used to approve transactions for suppliers to the defendant but who had not been prequalified to supply as per the prevailing prequalification policy. Thus the defendant's management decided to terminate the plaintiff's employment. A disciplinary hearing was conducted on 02.10.2006 and the plaintiff was present. The contractual clause allowed termination by paying 3 months in lieu of notice and that was done in the plaintiff's case. Thus RW testified that the claimant's employment was terminated on account of the misconduct of approving transactions with suppliers who were not prequalified as required and also, in accordance with the contractual termination clauses as cited in the letter of termination. RW testified that she saw the plaintiff signing the terms and conditions of the termination and he left with the car so that he was liable as prayed for by the defendant to pay outstanding car loan of Kshs.608,650.70.

The court has considered the evidence, the pleadings and the submissions. The court makes findings as follows:

1. There is no doubt that the plaintiff owed the defendant Kshs.608, 650.70 being outstanding car loan and the defendant's prayers as per counterclaim will succeed.
2. There is no doubt that the plaintiff voluntarily signed the terms and conditions of termination and

agreed to the termination accordingly. The terminal dues were calculated as per the termination agreement the plaintiff signed on 18.04.2007. The court finds that by that agreement of 18.04.2007 the plaintiff's contract of employment was validly and legitimately terminated by that contract of termination that the plaintiff signed on 18.04.2007. The court finds that the plaintiff's claims and prayers are clearly an afterthought flowing from the defendant's suit initiated in the Magistrate's Court at Thika by the defendant seeking to recover the Kshs.608,650.70 and the plaintiff's suit will fail as there is no justification for any of the claims and prayers made in the plaint filed for the plaintiff.

3. Accordingly the counterclaim will succeed and the plaintiff's suit will fail.

In conclusion judgment is hereby entered for the defendant against the plaintiff for:

- a) The plaintiff to pay the defendant Kshs.608,650.70 being outstanding car loan.
- b) The dismissal of the plaintiff's suit with costs.
- c) The plaintiff to pay the defendant's costs of the counterclaim.

Signed, dated and delivered in court at Nyeri this Friday, 30th September, 2016.

BYRAM ONGAYA

JUDGE