



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 332 OF 2013

RICHARD KROP KAPELO

CLAIMANT

v

KEN KNIT (K) LTD

RESPONDENT

JUDGMENT

1. For determination are the questions, *whether the Cause herein was compromised before legal action and if not, whether the dismissal of the Claimant was unfair and appropriate remedies.*
2. Richard Krop Kapelo (Claimant) was employed by Ken Knit (K) Ltd (Respondent) on 25 October 1991 and served until he was dismissed through a letter dated 15 February 2011.
3. The Claimant commenced legal proceedings against the Respondent on 17 October 2013 and the Respondent filed a Response on 25 November 2013, which prompted the Claimant to file a Reply on 5 December 2013.
4. The Cause was heard on 7 April 2016 and the parties were directed to file submissions.
5. The Claimant filed his submissions on 5 May 2016 while the Respondent filed its submissions on 23 June 2016.

Whether claim was compromised

6. After the dismissal, the Claimant and 2 others (Anthony Jayuga and Pius Nyanja) reported a dispute to the District Labour Officer, Uasin Gishu.
7. The Respondent produced a report dated 6 June 2011 from the District Labour Officer which made reference to conciliation meetings held between 17 May 2011 and 23 May 2011 and gave a breakdown of the agreements and recommendations reached in respect of the Claimant and the other 2 complainants.
8. The agreement was to the effect that the Claimant would be paid 1 month pay in lieu of notice, days worked in February 2011, *pro-rated* leave days and gratuity balances, all totalling Kshs 8,183/10.
9. The Claimant was paid and he acknowledged the payment on 15 June 2011.
10. In testimony, the Claimant confirmed an agreement was reached before the Labour Officer, but stated that he was dissatisfied and hence he moved to Court.
11. He stated that he signed for the payments before establishing the amount of dues to be paid and that in

any case he did not take the money.

12. The Respondent's witness on her part testified that the Claimant reported a dispute to the Labour Office, and that an agreement was reached pursuant to which the Claimant was paid.

13. The Claimant does not deny that the dispute was taken through conciliation and that an agreement was reached.

14. The Claimant did not suggest that he was forced or coerced to participate in the conciliation process. In fact, he is one of the employees who initiated the process and signed acknowledgment of the payment of the agreed dues in full and final settlement.

15. In the architecture of dispute resolution in the employment arena, labour officers have been clothed with certain statutory powers and functions.

16. The Labour Officer in the present case was exercising a statutory power/function and barring evidence that the Claimant was forced or coerced to agree to the compromise reached or that the Labour Officer misapprehended the facts or law presented to him, the Court is loath to interfere in compromises reached in such situations.

17. In the Court's humble view, the Claimant's complaint in the instant Cause was compromised before action and the claims now being advanced/sought are not only unmerited but an abuse of the Court process.

18. The upshot of the foregoing is that it is not necessary for the Court to examine the other issues posed for determination with the effect that the Memorandum of Claim filed in Court on 17 October 2013 is dismissed with no order as to costs.

Delivered, dated and signed in Nakuru on this 9th day of September 2016.

Radido Stephen

Judge

Appearances

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| For Claimant | Mrs. Orina instructed by Manyoni Orina & Co. Advocates |
| For Respondent | Ms. Kamau instructed by Kitiwa & Co. Advocates |
| Court Assistant | Nixon |