



REPUBLIC OF KENYA
IN THE EMPLOYMENT LABOUR AND RELATIONS COURT
AT MOMBASA
CAUSE 51 OF 2011
WALTER MAKOKHAWETA & 14 OTHERS.....CLAIMANTS
=VERSUS=
KENYA SUITCAS MANUFACTURERS LIMITED.....RESPONDENT
JUDGEMENT

Introduction

1. This is a claim for terminal benefits plus compensation for unfair termination of the claimants' employment contract by the respondent on diverse dates between December 2013 and December 2014.
2. The respondent has however denied the alleged unfair terminations and averred that all the claimants were employed under fixed terms contracts which lapsed automatically after effluxion of time.
3. On 5.2.2016 the parties agreed to admit all the documentary evidence filed by both sides. They further recorded settlement in respect of absent days at Kshs.120,370, Salary increment arrears at Kshs.20,699 and annual leave occurred at Kshs536210. Finally the parties agreed to dispose of the remaining issues of compensation for unfair termination, redundancy pay salary in lieu of notice and refund of the remitted NSSF contributions by written submissions.

Claimants' Case

4. The claimants submitted that they started off as unlimited term employees but down the road, the respondent gave them fixed term contracts. That the fixed term contracts were not renewed at times but they continued working after the lapse of the written contracts. According to them they were protected from arbitrary termination by section 35 and 40 of the Employment Act (EA).
5. The Claimants were however terminated without prior notice without any justifiable or reason although the respondent allegedly cited low business. They therefore prayed for one month salary in lieu of notice, 12 months' salary compensation, severance pay at the rate of 15 days' pay per year as per the 2011 CBA and refund of unremitted NSSF contribution.

Respondent's case

6. The respondent admitted that all the claimants were employed by her but only under fixed term contract as and when her operational requirements allowed. That the said contracts were signed by the claimants voluntarily. That the contracts lapsed after effluxion of time and as such the alleged

redundancy and unfair termination did not arise. She therefore urged that the claim for notice, redundancy pay and compensation for unfair termination be dismissed

7. As regards the refund of the unremitted NSSF deductions, the respondent submitted that all the deductions made were remitted.

Analysis and Determination

8. I have carefully perused and considered the pleadings, documents, statements, affidavits and submissions filed herein and found no dispute in the fact that the claimants were employed by the respondents between 1991 and December 2014. The issues for determination are:

- a. **Whether the claimants' employment contracts were unfairly terminated.**
- b. **Whether they are entitled to the reliefs sought**

Unfair termination

9. The claimants alleges that they were terminated without any reason and without any prior notice. Surprisingly, they have also alleged that they were declared redundant on ground of low business. No written evidence or at all has been adduced by them to support the foregoing contentions that they were terminated by the respondent against the law.

10. The respondent has denied the alleged unfair termination and redundancy and maintained that the claimants fixed term contracts lapsed after the affluxion of time

11. After considering the foregoing rival contentions by the two parties, I find on a balance of probability that no evidence has been adduced to prove that the claimants fixed term contracts were terminated prematurely. There is further no evidence to prove the claimants continued to work after the lapse of their respective fixed term contracts. They also did not prove that the fixed term contracts had been converted to unlimited term contracts which could only be terminated without notice or just cause. Consequently, I find and hold that the claimants fixed term contracts were never terminated unfairly by the respondent through redundancy or otherwise.

Reliefs

11. In view of the foregoing the prayer for salary in lieu of notice, redundancy pay and compensation for unfair termination is dismissed. Similarly, the claim for refund for unremitted NSSF deductions is dismissed for lack of particulars and evidence to prove the exact period when the NSSF deductions were made but nor remitted. The foregoing observation is very vital in reaching a fair decision by the court because as averred by the defence and accepted by the court, the claimants did not serve in a continuous period but intermittently at various periods of fixed term contracts depending on the respondent's operational requirements.

Deposition

12. For the reasons stated above this suit is dismissed save for the award of the aggregate sum of **Kshs.677,279** agreed by the parties on 5. 2. 2016. The claimants will have half costs of the suit plus interest.

Signed and dated at Mombasa this 9th day of September 2016.

ONESMUS MAKAU

JUDGE