



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 533 OF 2015

BETWEEN

SAVACHI M. AMOS CLAIMANT

VERSUS

SEIFEE BAKERIES [1968] LIMITED RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Matete Mwelese & Company Advocates for the Claimant

Federation of Kenya Employers [FKE] for the Respondent

JUDGMENT

1. Mr. Savachi M. Amos filed his Statement of Claim, on the 24th July 2015. He states he was employed by the Respondent as a Chef, on 31st July 2004, earning a salary of Kshs. 533 per day, which was paid weekly. He signed a contract in July 2011, which the Respondent retained. On 4th February 2015, the Respondent locked out the Claimant from its workplace. His contract was terminated without cause. The Claimant had issued the Respondent a notice of termination of employment of 30 days, dated 27th January 2015. Before its expiry, the Respondent locked the Claimant out. He did not go on annual leave for 7 years, and received no pay in lieu of annual leave. He feels termination was unfair and unlawful, and prays for the following orders against the Respondent:-

- a) 1 month salary in notice pay at Kshs. 13,858.
- b) Unpaid leave for 2014 at Kshs. 13,858.
- c) 12 months' salary in compensation for unfair termination at Kshs. 166,296.
- d) Service pay from 2004 to 2011 at Kshs. 48,503.
- e) Accrued annual leave from 2004 to 2014 at Kshs. 110, 006.

Total..... Kshs. 352,521

f) Certificate of Service to issue.

g) Costs.

2. The Respondent filed its Statement of Response on the 31st August 2015. Its position is that it employed the Claimant in the year 2011, on yearly renewable contract. He resigned of his own volition on the 27th January 2015. He always went on annual leave as shown in Respondent's leave records tagged as Respondent's appendix 3. He confirms in his resignation letter that he worked from the year 2011. He is not entitled to compensation and notice pay, having initiated termination. He utilized his annual leave and the claims under these heads are not payable. He was a Member of the N.S.S.F, and ineligible for service pay. The Respondent is not opposed to the prayer for release of the Claimant's Certificate of Service. The rest of the Claim should be dismissed with costs to the Respondent.

3. The Parties agreed in Court on 22nd June 2016, to have the Claim considered and determined on the strength of the Pleadings, Documents and Submissions. They confirmed the filing of Submissions at the last appearance in Court on the 20th July 2016, when the Court scheduled the delivery of its Judgment to 21st October 2016.

4. The Claimant submits it is not disputed he was employed by the Respondent. The decision by the Respondent to terminate the Claimant's contract, before the notice issued to the Respondent by the Claimant expired, was unlawful and unfair. The Respondent did not challenge the Claimant's assertion on the lockout. The Claimant submits he resigned but was never given the time to serve his notice period. He submits he is entitled to the prayers sought.

5. The Respondent restates its position in the Pleadings, submitting that the Claimant resigned voluntarily. His contract was not terminated by the Respondent. The Respondent likewise restates its position on other aspects of the dispute. It is therefore not necessary for the Court to repeat here all that has been restated by the Respondent in the submissions.

The Court Finds:-

6. The Claimant wrote to the Respondent a resignation letter dated 27th January 2015. He gave 1 month termination notice. It was not proper to turn around and demand that he is heard before termination, or that he is given by the Respondent valid reason or reasons for termination; he made the decision to terminate the contract himself. The Court does not see how the Respondent would be liable to compensate the Claimant, for a termination decision which rested entirely with the Claimant. The prayer for compensation is rejected.

7. The complaint should have been that the Respondent shortened the notice period given by the Claimant. The Claimant intended to leave at the end of February 2015. He was instead compelled to leave almost immediately he issued his notice. What he merits is notice pay, as the effective date given by him in terminating his contract, was unilaterally changed by the Respondent, to 4th February 2015.

8. His claim for unpaid annual leave of 7 years was disproved through the annual leave schedules attached to the Statement of Response. There was no evidence that the Claimant worked from the year 2004, and claims for unutilized annual leave going back to the year 2004, have no foundation. Similarly, there is no support for the prayer on service pay based on the period beginning 2004. It was shown the Claimant was in any case enrolled with the N.S.S.F and therefore ineligible to receive service pay.

9. In the end the Court finds termination was instigated by the Claimant. He is not entitled to compensation for unfair termination. The Respondent however shortened the notice period by 24 days. ***The Claimant merits notice pay for the remainder of the 24 days in the month of February 2015, which the Court grants at Kshs. 533 x 24 = Kshs. 12,792. The Respondent shall release to the Claimant his***

Certificate of Service. No order on the costs.

IN SUM, IT IS ORDERED:-

- a) The Claimant left employment voluntarily.***
- b) Notice of termination issued by him was shortened by the Respondent.***
- c) He is granted notice pay for the remainder of the notice period at Kshs. 12, 792.***
- d) Certificate of Service to issue.***
- e) No order on the costs.***

Dated and delivered at Mombasa this 18th day of October 2016.

James Rika

Judge