



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 2113 OF 2015

ASHRAF MUSAAZI.....CLAIMANT

VERSUS

RIFT VALLEY RAILWAYS (KENYA) LIMITED.....1ST RESPONDENT

RIFT VALLEY RAILWAYS (UGANDA) LIMITED.....2ND RESPONDENT

Mr. Kitche for the Respondent

M/s Kethi Kilonzo for Claimant

RULING

1. A Notice of Motion application dated 20th January 2016 seeks the following orders;

The honourable court strikes out the memorandum of claim dated 30th November 2015 as against the 2nd respondent and dismiss the claim as against the 2nd respondent.

2. The application is based on the grounds set out in the Notice of Motion to wit;

- i. The memorandum of claim discloses no justifiable cause of action against the 2nd respondent.
- ii. The jurisdiction of the Employment and Labour Relations Court under section 12 of the Employment and Labour Relations Court Act, 2011 as amended and section 87 of the Employment Act 2007 is limited to matters arising *inter alia* between employer and employee in the course of employment;
- iii. The 2nd respondent is not the claimant's employer
- iv. There are no prayers and reliefs sought in the memorandum of claim which lie against the 2nd respondent.

Response

3. The respondent has made submissions in opposition to the Notice of Motion dated 20th January 2016 relying on a replying affidavit sworn on 12th February 2016, memorandum of claim dated 30th November 2015, affidavit sworn on 30th November 2015 in support of the memorandum of claim, bundle of documents attached to the memorandum of claim and bundle of authorities filed in support as follows;

4. That the court ought to apply the test laid by the Court of Appeal in the decision of **D. T. Dobie and Company (Kenya) Limited -Vs- Joseph Mbarie Muchina & another (1980) eKLR** as follows;

i. Whether there is a single triable issue

ii. Whether the issues raised are suited to be tried summarily by affidavit or through hearing by a trial court.

iii. Whether the suit ought to be summarily dismissed because it appears so hopeless that it plainly and obviously discloses no reasonable cause of action.

5. The claimant submitted that it is patently clear from the pleadings that the 2nd respondent offered the claimant employment as an associate of the Rift Valley Railways Management Talent Development Programme. The duration of the programme was 12 months.

6. Under clause 6 of the agreement between the parties the claimant was bound to remain in the employment of the 1st respondent for a period of three years upon successful completion of the programme with the 2nd respondent.

7. The claimant joined the 1st respondent on 17th July 2013 and was due to complete the three years term on 18th July 2016. However the 1st respondent terminated the employment of the claimant before the end of the three year bond period.

8. It was also a term of the bond clause aforesaid that earlier termination of the obligation to serve the three years by the claimant would attract a penalty against the claimant to reimburse the 2nd respondent on a prorated basis all expenses incurred during the programme together with any damages suffered by the company as a result of the early termination.

9. The claimant submits that the training contract entered into by the claimant and the 2nd respondent was never terminated and neither the claimant nor the 2nd respondent were released from the obligations of the training contract. That this is a triable issue and the foundation of a reasonable cause of action against the 1st and 2nd respondents jointly and severally.

Determination

10. It is not in dispute that the claimant completed the training program under the 2nd respondent and was issued with a certificate of completion dated 9th July 2014. It is also not in dispute that the claimant did not breach clause 6 of the training programme the employment having been terminated, not by herself but by the 1st respondent.

11. The conduct by the 1st respondent in terminating the employment of the claimant before she had served the three year period automatically released the claimant from the service bond and therefore any obligation under clause 6 of the training contract.

12. The cause of action disclosed in the memorandum of claim is that of unlawful and unfair termination of employment of the claimant by the 1st respondent on 5th January 2015. No averments whatsoever have been made in the memorandum of claim that disclose a cause of action against the 2nd respondent.

13. The claimant's suit is based on a breach of contract by the 1st respondent. The claimant seeks reinstatement by the 1st respondent to the job she held in Kenya without loss of salary and other contractual benefits. In the alternative the claimant seeks damages for unlawful termination of employment.

14. The application to strike out the 2nd respondent from the suit is merited and the same is allowed with costs in the cause.

Dated and delivered at Nairobi this 7th day of October, 2016.

MATHEWS N. NDUMA

PRINCIPAL JUDGE