



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 558 OF 2013

VINCENT OJIAMBO OKADOH.....CLAIMANT

VERSUS

REGAL PHARMACEUTICALS LIMITED...RESPONDENT

JUDGMENT

Introduction

1. The Claimant's claim brought by a Memorandum of Claim dated 22nd April 2013 and filed in Court on even date is for unlawful termination of employment and failure to pay terminal dues.
2. The Respondent filed a Reply on 2nd May 2013 and the matter proceeded to hearing with the Claimant testifying on his own behalf and Joan Ndung'u for the Respondent.

The Claimant's Case

3. The Claimant states that he was employed by the Respondent as an Assistant Clerk at a monthly salary of Kshs. 10,674 effective 4th February 2002. He worked until 2nd January 2013 when his employment was terminated.

4. The Claimant pleads that the termination of his employment wrongful and unfair. He now claims the following:

- a. A declaration that the termination of his employment was unlawful
- b. Compensation for unlawful termination.....Kshs.128,088.00
- c. Two months' salary in lieu of notice.....21,348.00
- d. Service pay.....73,532.00
- e. Annual leave.....93,931.20
- f. House allowance.....128,088.00
- g. Leave travelling allowance.....20,583.30

h. Costs plus interest

The Respondent's Case

5. In its Reply dated 30th April 2013 and filed in Court on 2nd May 2013, the Respondent states that the Claimant was employed on a fixed term contract running from 3rd January 2012 and terminating on 14th December 2012.

6. The Respondent avers that it was an express term of the employment contract that the employment would, unless otherwise advised, terminate on 14th December 2012 and that renewal would be at the Respondent's discretion. The Respondent maintains that there was no obligation to issue any notice of termination as the Claimant was on a fixed term contract.

7. Regarding the claim for service pay, the Respondent states that the Claimant was a duly registered member of the National Social Security Fund (NSSF) to which the Respondent diligently made regular contributions. The Claimant is therefore not entitled to service pay under the law.

8. The Respondent also denies the claim for leave pay stating that the Claimant had utilized all his leave days during the period of his employment.

9. The Respondent further denies owing the Claimant any dues in house allowance adding that the Claimant was paid a consolidated salary which was inclusive of house allowance.

10. The Respondent states that the issue of leave travelling allowance is the subject of a trade dispute pending at the Ministry of Labour and the claim is therefore premature. At any rate, the Respondent denies owing the Claimant any dues in leave travelling allowance.

Findings and Determination

11. There are two (2) issues for determination in this case:

- a. Whether the Claimant's employment was unlawfully terminated;
- b. Whether the Claimant is entitled to the remedies sought.

The Termination

12. The Respondent's defence to the claim for unlawful termination is that the Claimant was on a fixed term contract which ran full term and was not renewed.

13. Clause 2(1) of the subject employment contract states as follows:

"The company shall employ the employee for 11.5 MONTHS in the capacity of an Assistant Clerk effective 03-01-12 regardless of the date of signing the contract and unless otherwise advised, shall terminate on 14-12-12. At the end of the contract period the company may renew the contract at its own discretion depending on the availability of the employment and the performance of the employee."

14. From this Clause, it is evident that the Claimant was on a fixed term contract running from 3rd January 2012 to 14th December 2012. In the final submissions filed on behalf of the Respondent reference was made to the decision in ***Bernard Wanjohi Muriuki v Kirinyaga Water and Sanitation Company Limited & Another [2012] eKLR*** where it was held as follows:

"there is no obligation on the part of an employer to give reasons to an employee why a fixed-term contract of employment should not be renewed....The only reason that should be given is

that the term has come to an end, and no more.....Reasons beyond effluxion of time, are not necessary in termination of fixed-term contracts, unless there is a clause in the contract, calling for additional justification for the termination.”

15. I agree with this holding and therefore reach the conclusion that the Claimant having served his fixed term contract to the last day cannot lay a claim for unlawful termination of employment. Similarly, the claim for notice pay is unsustainable as there was no premature termination of the fixed term contract (see ***Margaret A. Ochieng v National Water Conservation & Pipeline Corporation [2014] eKLR***).

Other Remedies

16. Regarding the claims for service pay, annual leave and house allowance which according to the Claimant are for the period running from 2002 to 2008, the only thing I will say that is that these claims are statute barred by dint of Section 90 of the Employment Act, 2007. The same would apply to the claim for leave travelling allowance save for the sum of Kshs. 4,450 that is admitted.

17. The result of the foregoing is that the Claimant’s entire claim fails and is dismissed. The sum of Kshs. 4,550 which is admitted as leave traveling allowance is payable to the Claimant.

18. Each party will bear their own costs.

19. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 25TH DAY OF NOVEMBER 2016

LINNET NDOLO

JUDGE

Appearance:

Vincent Ojiambo Okadoh (the Claimant in person)

Miss Kiiru for the Respondent