



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT MOMBASA

Cause Number 446 Of 2014

Between

1. SIDOR OTIENO

2. PARIS MACHARIA CLAIMANTS

VERSUS

SOUTHERN ENGINEERING COMPANY LIMITED ... RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Nyange Sharia Advocate for the Claimants

Ms. Opolo Advocate instructed by the Federation of Kenya Employers for the Respondent

JUDGMENT

1. The Claimants were trained as Rigger Banksman and Crane Operators from 27th June 2012, to 30th June 2012. The Respondent paid the costs of training and certification. They completed their training successfully. They were not employed by the Respondent at the time of the training.
2. The Parties had agreed that upon completion of training, the Claimants would work for the Respondent for not less than 3 years, as the Respondent had met the costs of the training. In event the Claimants left employment before the end of 3 years, the Respondent would recover the cost of training from the Claimants.
3. They were offered contracts of employment commencing 1st July 2012, to lapse 31st December 2012. They were to work as Banksmen, earning a monthly basic salary of Kshs. 10,719, and house rent allowance of Kshs. 4,100. They were to work in Turkana County.
4. They declined to take up employment. The Respondent in return declined to release to the Claimants the Certificates of Banksman Training. The Claimants filed this Claim on 16th September 2014, praying the Court to declare the withholding of the Training Certificates as unfair and unlawful; compel the Respondent to release the Certificates; and grant any other suitable relief.

5. The Respondent filed its Statement of Response on 18th February 2015. Its position is that it honoured its end of the bargain. It financed the Claimants' training. It issued them employment contracts. They refused to sign the contracts and walked away. The Respondent suffered actual financial loss. The Certificates were in any case, valid for 6 months, and have since expired. The Respondent prays the Claim is dismissed with costs to the Respondent.

6. Parties agreed on 22nd September 2016, to have the matter considered and determined on the strength of the record. They confirmed filing of their Closing Submissions on 31st October 2016. The Claimants submit the continued withholding of their Certificates amounts to unfair labour practice. The Respondent submits the Claimants breached the terms of their training and are not entitled to have the Certificates.

The Court Finds:-

7. The Claimants were trained on the understanding they would work for the Respondent, on completion of the training and certification, for a period not less than 3 years.

8. The Respondent met its end of the bargain and financed Claimants' training. The Claimants successfully completed training, and were offered contracts to work for the Respondent for a period not less than 3 years. They declined employment after learning of their terms and conditions of employment.

9. The Respondent did not engage in unfair labour practice by refusing to release the Claimants' Certificates. The Claimants failed to meet their end of the bargain, and did not give any thought to the financial resources the Respondent had applied in their training. They failed to meet their obligation under the pre-employment agreement. They did not offer to reimburse the Respondent the cost of the training, as they would have been obliged to do, in the event they did not work for a period not less than 3 years. Companies invest in potential and existing manpower, and expect to have return for their investment. The Claimants cannot be allowed to just pick their Certificates, and move into the job market courting Respondent's competitors, unmindful of the Respondent's investment in their training and acquired skills. The Respondent did not engage in any unfair labour practices, or require the Claimants to undertake forced labour, as submitted by the Claimants; the Respondent simply pursued its right under a valid pre-employment contract.

10. The Claimants cannot be assisted by the Court, without fulfilling their obligation to the Respondent. They should however have the Certificates if they discharge their obligation to the Respondent. Although the Respondent states the Certificates have expired, there would be no reason to continue to withhold them, if the Claimants make good their debt to the Respondent. It could be that these Certificates are useful to the Claimants in marketing their credentials in the labour market.

IT IS ORDERED:-

a. The Claimants are at liberty to collect their Certificates from the Respondent, upon them meeting the costs of their training.

b. The amount of training costs be communicated to the Claimants by the Respondent forthwith, and if unpaid within 30 days of communication, this Claim shall stand dismissed in its entirety, file closed, with no order on the costs.

Dated and delivered at Mombasa this 2nd day of December 2016.

James Rika

Judge