

REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 739 (N) OF 2009

GEORGE ODHIAMBO OGUNYO.....CLAIMANT

VERSUS

PRESSMASTER LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant filed the suit on 26th November 2009. In his Memorandum of Claim the Claimant averred that his services were unlawfully terminated by the Respondent. In the Claim it was averred that there was witch hunt leading to the intentional sabotage of the Claimant's work. He thus sought payment of 3 months salary notice pay in lieu of notice, three months notice pay in lieu of notice in respect of house allowance, leave due and travelling allowance, serving gratuity at rate of 18 days per each completed year, 12 months compensation for victimization and breach of contract.
2. The Respondent filed a Memorandum of Reply on 11th February 2010 and subsequently a Counterclaim by way of Supplementary Memorandum pursuant to leave on 25th February 2011. The Respondent averred that there ever existed a witch-hunt or that the Respondent purposefully set out to terminate the Claimant's employment. It was averred that the final dues were sent to the Claimant who rejected them. In the Counterclaim by way of Supplementary Memorandum the Respondent averred that the Claimant in breach of the notice period only served the month of August 2009 and seven days in September 2009.
3. The Respondent sought dismissal of the suit on account of no steps being taken while the Claimant indicated he wished to prosecute the matter prompting the Court to determine the matter in terms of Rule 27 of the Industrial Court (Procedure) Rules 2010. The case had come up many times and was adjourned at behest of the Respondent and costs ordered hence the course adopted by the Court.
4. The Claimant was entitled to serve notice or receive payment in lieu thereof. It is apparent that his services became untenable due to the actions of his employer frustrating his services as demonstrated in his handwritten letters to the Respondent's HR Manager. The Respondent does not deny receipt of the letters or the veracity thereof. In my view therefore the Respondent's management made it untenable for the Claimant to serve his 3 months notice period. He therefore would be entitled to receive his dues computed as notice pay for the balance of 2 months. The Respondent's counterclaim was based on his inability to serve the three months and was in the tune of 34,000/-. It was not proved that the Respondent provided a conducive environment for the Claimant to serve the notice period and therefore the Respondent cannot benefit from its own intransigence. The Respondent's counterclaim is dismissed with costs.
5. In the final analysis I will enter judgment for the Claimant for 40,000/- plus costs to be agreed or taxed. All the other claims the Claimant presented were not proved as the issue of gratuity does not arise as he was a contributor to NSSF.

Orders accordingly.

Dated and delivered at Nairobi this 5th day of February 2015

Nzioki wa Makau

JUDGE