



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 156 OF 2013

BENJAMIN YEGO.....CLAIMANT

VERSUS

BOB MORGAN SERVICES LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent his erstwhile employer for his discharge from employment on medical grounds. He averred that he was employed in 1985 and was discharged on 4th October 2012. He asserted that the Respondent has withheld one-month salary in lieu of notice, severance pay for 27 years of service and one year gross salary as compensation. He conceded that an amount of Kshs. 83,870.68 had been paid to offset his outstanding loan. He thus claimed the sums stated to be due from the Respondent.
2. The Respondent filed its Reply to Memorandum of Claim on 12th April 2013. In the reply, the Respondent averred that the Claimant was discharged from employment following medical advice from a medical doctor. It was averred that the Claimant initiated the process of retirement on medical grounds and was retired on his own request. The terminal dues were forwarded to the bank where the Claimant had a loan in accordance with the irrevocable instructions given. The Respondent averred that in spite of the Claimant not being entitled to severance pay he was paid for each year worked.
3. The Claimant filed a Reply to Respondent's Response on 17th May 2013. The Claimant averred that the doctor recommended early retirement and not dismissal. He averred that he was dismissed and not retired.
4. The Claimant testified on 10th February 2015. He stated that he served the Respondent for 27 years and was earning 17,806.85 at the time he left employment. He was given a letter of discharge on 3rd October 2012 and was not to report to work on the following day. He had been unwell and was referred to Mbagathi District Hospital and later Uasin Gishu District hospital where the doctor recommended the discharge on medical grounds. He denied that he gave authority for money to be paid to CFC Stanbic to clear a debt. He sought the payment of service for 27 years, notice, refund of deposit on uniform and compensation.
5. In cross-examination the Claimant testified that he was not given a letter upon employment and only got a letter in 1996. He denied that he informed Mr. Ngetich that he could not work. He stated that on visiting the hospital in Uasin Gishu he was told by the doctor that he should be

- retired on medical grounds. He confirmed that he is the one who brought the letter to the Respondent's offices and handed it to a lady at the HR office. He testified that he received a letter in 2014 which indicated the problem he had was no longer there and he thus could go on working. He confirmed the sum of Kshs. 88,827/- was sent to his bank though he had not given instructions to the Respondent to pay the bank. He confirmed payment to NSSF was made as per his payslip.
6. In re-examination he confirmed that he got a contract in 1996. He testified that he got a letter that confirmed there was nothing wrong with him.
 7. The Respondent called Mr. Dennis Michieka Orina the Quality Assurance and Administration Manager of the Respondent. He testified that the Claimant was employed on casual basis from 1985 and was finally on permanent basis from 1996. He testified that in 2012 the Claimant spoke to Mr. Ngetich the HR director and requested early retirement. Because HR director had no history of the ailment, the director asked the Claimant to forward a medical report to enable the company consider the issue. The Claimant availed a document advising early retirement on medical grounds. The HR director received the document and discussed the issue with the Claimant and agreed to release him as per request. The final dues were calculated and paid to the Claimant's account at CFC Stanbic as per irrevocable instructions by the Claimant.
 8. In cross-examination he testified that the Respondent had not contested the employment in 1985 on annual contracts. He admitted that the Claimant was injured in 1998 at the workplace and was compensated for it. He testified that the Claimant approached Mr. Ngetich for the early retirement on medical grounds. He confirmed the Claimant never failed the refresher course and went on to serve after the accident. He testified that the Respondent was not a doctor and did not supervise doctors and did not terminate the services of the Claimant.
 9. In re-exam he testified that the Claimant went to the HR director and was advised to get a doctors advice. The Claimant went to Eldoret and procured a report that recommended his retirement on medical grounds.
 10. Parties field submissions reiterating their positions. In support of his case the Claimant attached the cases of **Kennedy Nyanguncha Omanga v Bob Morgan Services Limited [2012] eKLR** and **Loise Wambui v School Management Committee, Larmudiac Primary School** to the submissions he filed on 27th February 2015.
 11. The Respondent filed its submissions on 6th March 2015 and reiterated that the Claimant voluntarily went to Uasin Gishu district hospital and was issued with a medical report recommending retirement on medical grounds. The Respondent relied on the cases of **Mutunga Mulei v Insight Management Consultants Ltd [2014] eKLR** and **Jane Mokuva v Alexander Forbes Health Care Ltd [2014] eKLR**.
 12. The Claimant in this claim sought payment of various dues. He asserted that he was dismissed without notice. A reading of the letters leading to his termination indicate the alleged dismissal was on account of medical reasons. The Claimant was the one who initiated the retirement. He thus was the one who led to the termination of employment. The Respondent merely acceded to the demand by the Claimant. The Claimant had a burden under Section 47(5) of the Employment Act to show the termination was unfair whilst the Respondent had a burden to justify the termination. I do not see the unfairness in the discharge initiated by the Claimant. It is also uncontroverted that the Claimant was paid his dues in full and the sum paid in compliance with the irrevocable instructions he had given to the Respondent. The Respondent in executing the Claimant's request failed to issue him with a written notification on notice. In the premises I will order payment of one-month salary being Kshs. 17, 836.95/- as notice and no more.
 13. In the final analysis I find the balance of the suit has absolutely no merit and dismiss the rest of the claim but make no order as to costs.

Orders accordingly.

Dated and delivered at Nairobi this 20th day of April 2015

Nzioki wa Makau

Judge