



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 2001 OF 2012

ROBERT OCHIENG ORACHA.....CLAIMANT

VERSUS

BLOWPLAST LIMITED.....RESPONDENT

JUDGMENT

1. By a memorandum of claim filed on 4th October, 2012, the claimant avers that he was employed by the respondent as a machine attendant on 1st July, 2006 at a salary of 7,988 per month. He worked for the respondent continuously until 28th February 2009 when he got injured in course of his work and was advised by his personal doctor not to resume work as he was still suffering from his injuries and the doctor recommended that he be retired on medical grounds.
2. He averred that when he delivered the doctors letter to the respondent's personnel manager he was chased away and told never to set foot in the respondent's premises. He reported the matter to the Labour Office and the respondent was summoned to attend conciliation meetings after which he was paid Khs.6,690 covering 21 days leave and 7 days sick off promising to consider other claims at a later time.
3. The claimant complained that no further payment came forth prompting the filing of the current suit in which he seeks one month's salary in lieu of notice of termination of employment and 12 month's salary as compensation for unfair dismissal.
4. In response to the claim, the respondent filed what in all honesty can be described as a bare denial of the claimant's claim. The respondent even denied the claimant was its employee. The respondent further denied that their actions amounted to unlawful and inhumane termination.
5. In his final submission to Court, Counsel for the claimant submitted that the claimant had done nothing wrong to warrant his dismissal and had only innocently delivered a letter to show he could no longer be able to work for the respondent due to the nature of his injuries. Counsel therefore submitted that the claimant's dismissal was unfair, unlawful and inhuman.
6. Counsel for the respondent on the other hand submitted that the claimant's case was conciliated by the Labour Office who made a recommendation that he be paid Kshs.6,690 on account of 21 days leave and seven days sick off. Counsel denied that the respondent made any representation over further payments. The only payment which could have been left was payment in lieu of notice for termination.

7. It would seem that there is no dispute that the claimant became incapable of continuing with his employment with the respondent due to the injuries he sustained in the course of his employment.

8. Termination of employment must be for a justifiable reason and in executing the reason, a fair procedure must be followed. If as recommended by the claimant's doctor, the claimant became incapable of continuing with his contract of employment, both parties to the contract ought to have invoked the exit clause either in the letter of appointment if any or as provided in the Employment Act.

9. Prior to his injuries, the claimant presumably rendered his services to the satisfaction of the respondent. The unfortunate incident that rendered him incapable of continuing to serve his employer was met in the course of his employment. If for that reason the contract must come to an end it should be done in sensitive and humane manner.

10. The case before me is akin to retirement on medical grounds. In the circumstances doing the best I can, I will award the claimant one months' salary in lieu of notice.

11. The Court further awards the claimant 10 month's salary as compensation for unfair termination of services.

12. In conclusion the award is computed as follows:-

(a) One month's salary in lieu of notice.....7,088.00

(b) 10 month's salary as compensation for

unfair Termination of services.....70,880.00

77,968.00

(c) Costs of the suit

13. It is so ordered.

Dated at Nairobi this 26th day of June 2015

Abuodha J. N.

Judge

Delivered this 26th day of June 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge