REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 251 OF 2014

HENRY CHOTI **CLAIMANT**

v

SEASONS HOTEL LTD **RESPONDENT**

JUDGMENT

1. Henry Choti (Claimant) had initially commenced legal action against Seasons Hotel Nakuru on 26 June 2014 but after a preliminary objection was raised the Court ordered him to amend the Memorandum of Claim.
2. In the Amended Memorandum of Claim filed in Court on 11 November 2014, Seasons Hotel Ltd (Respondent) was substituted as the new Respondent. The Respondent filed an Amended Response on 14 November 2014 and the Cause was heard on 1 July 2015.
3. The Claimant's case is that he was employed by the Respondent in August 1990 as a Room Attendant at a wage of Kshs 7,00/- per month but he was not issued with a written contract. The wage was increased over time and was Kshs 9,000/- at time of separation.
4. As regards the separation, the Claimant contended that sometime in 2013 while deployed to a construction site run by the Respondent he fell and got injured and could not continue with work.
5. Consequently, he wrote a resignation letter to the Respondent and the same was accepted and he worked until October 2013. He stated that the Respondent's Director agreed to pay him Kshs 50,000/- as terminal dues but in instalments. He was not paid the dues as agreed and therefore he was seeking the same.
6. During cross examination, the Claimant stated that although he signed the verifying affidavit which accompanied the initial Memorandum of Claim, he did not sign the verifying affidavit annexed to the Amended Memorandum of Claim.
7. He also stated that although he pleaded his employment was unfairly terminated, the correct position was that he resigned due to age and that he was a contributor to the National Social Security Fund.
8. The Respondent called its Manager to testify and she stated that although the Claimant served it for 24 years as a Room Attendant, he discussed his resignation at a Staff meeting and indicated he was resigning to concentrate on his tea farm, and that the Claimant was not promised any dues.
9. In cross examination, she stated that she could not tell whether any of the Respondent's 3 Directors promised the Claimant dues as alleged.
10. After the close of hearing, the parties agreed and the Court directed that written submissions be exchanged within stated timelines.
11. By this morning, the Claimant's submissions were not on file while the Respondent filed its submissions on 29 July 2015.
12. The issues arising for determination are, *whether the Claimant's employment was unfairly terminated and whether the Claimant is entitled to any terminal dues/appropriate remedies.*

Whether Claimant's employment was unfairly terminated

13. The Claimant pleaded his case as one of unfair/unlawful termination of employment.
14. In Court, he expressly disowned the issue of termination and stated that he resigned.
15. Although the real reasons for resignation did not emerge from the testimony, the Court finds that the employment of the Claimant was not terminated but he resigned.
16. If at all that resignation was caused by the Respondent's conduct, the same was not proved to bring the case under a cause of action based on constructive dismissal.

Appropriate remedies/Terminal dues

17. Employees are entitled to certain rights because of the employment relationship and some of these do not depend on the manner of separation.
18. Some of the entitlements accrue from contractual agreement or statutory intervention.
19. The Claimant has not shown that he was entitled to Kshs 50,000/- on account of contractual agreement.
20. Equally, he did not cite any statutory authority for an entitlement to Kshs 50,000/- as terminal dues.
21. The issue therefore remains whether there was a promise to pay the Claimant Kshs 50,000/-.
22. The Claimant did not name or disclose the identity of the Respondent's Director or Manager who promised to pay him the dues sought.
23. Having served the Respondent for 24 years, the Claimant must have known the names of the Directors.
24. The Court reaches the conclusion that the Claimant has not proved that the Respondent or any of its agents promised to pay him terminal dues.
25. Before concluding, the Court must state that the conduct of the Claimant's case was dilatory/casual at best.
26. Further, it is not necessary to consider the legal effects of the admission by the Claimant that he did not sign the verifying affidavit which was annexed to the Amended Memorandum of Claim.
27. The upshot of the foregoing is that the Cause is dismissed with costs to the Respondent.

Delivered, dated and signed in Nakuru on this 30th day of October 2015.

Radido Stephen

Judge

Appearances

For Claimant Mr. Kibet instructed by Mirugi Kariuki & Co. Advocates

For Respondent Mr. David Mwangi (Director)

Court Assistant Nixon