



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT NAIROBI

CAUSE NUMBER 624 OF 2013

BETWEEN

KIMATU IGECHA CLAIMANT

VERSUS

SBI INTERNATIONAL HOLDINGS AG KENYA..... RESPONDENT

Rika J

CC. Mr. Kidemi

Mr. Makori holding brief for Mr. J.M. Onyancha Advocate for the Claimant

Prof. Albert Mumma & Company Advocates for the Respondent Absent

ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

AWARD

1. The Claimant filed his Statement of Claim, on 6th May 2013. The Respondent, a Road Construction Company, filed its Statement of Response on 28th June 2013. The hearing was scheduled by the Claimant's Advocate for 23rd January 2014. The Respondent's Advocates were notified and acknowledged receipt of the hearing date, as borne out in the affidavit of service sworn by Process-Server Amos Adwera on 21st January 2014. The Respondent and its Advocates did not attend the hearing.
2. The Claimant testified he was employed by the Respondent as Tipper Lorry Driver in the year 2007. He was issued a Hiring Card. He was working at the Respondent's JKIA Nairobi- Mombasa Road, earning a total monthly net pay of Kshs. 25,890.
3. On 21st March 2009, the Respondent alleged the Claimant was involved in the theft of its Tipper Lorry which was assigned to him. The Claimant was arrested and placed in the custody of the Police for 5 days. He was absolved of the offence, and became a witness for the prosecution in Machakos Magistrate's Court Criminal Case Number 964 of 2009. Other Persons were charged with the offence of stealing in that case. After his testimony he went back to work, and was informed by the Respondent he was no longer an employee of the Respondent. Police confirmed to the Respondent that the Claimant was merely a witness, but the Respondent would not reinstate the Claimant. He therefore filed this Claim seeking:-

- a) Service pay for the period worked at Kshs. 34,520;
- b) Unpaid leave for 2 ½ years at Kshs. 64,725;
- c) One month salary in lieu of notice at Kshs. 25,890;

Total Kshs. 125,135

The Claimant also seeks general damages for false imprisonment; costs; interest; and any other remedies.

4. The Respondent responds in its Statement filed in Court that the Claim is time barred, having been filed outside the limitation of three years prescribed under the Employment Act 2007. Secondly, the Claimant was arrested and held in Police Custody on reasonable suspicion of having stolen a Tipper Lorry, and the Respondent was entitled to dismiss him under Section 44[4] [g] of the Employment Act 2007. The arrest was made independently by the Police. The Respondent was not privy to the deal between the Claimant and the Police whereof the Claimant was turned into a Prosecution witness. This did not preclude him from taking responsibility for the stolen Tipper Lorry, which was an employment offence at the workplace separate from the criminal offence being tried in Court. Termination was lawful and the Claimant is not owed any dues by the Respondent. The Respondent prays the Court to dismiss the Claim.

The Court Finds and Awards:-

5. The Claim was filed on 6th May 2013. The Claimant left employment on 21st March 2009. Three years prescribed under the law, within which to file an employment claim, lapsed on 20th March 2012. The Claimant was late by more than one year. He did not even make an attempt to explain delay. Secondly, there were reasonable grounds in terminating his contract of employment. The Respondent's Tipper Lorry assigned to the Claimant was stolen. He was initially a suspect, who was turned into a prosecution witness. The criminal trial did not bar the Respondent from taking disciplinary action against the Claimant, based on the Respondent's own internal disciplinary processes. It was not for the Police or the Criminal Court, to absolve the Claimant of the employment offence. ***The Court finds the Claim is improperly before it, and thin on merit. It is hereby dismissed with no order on the costs.***

Dated and delivered at Nairobi this 28th day of February 2014

James Rika

Judge