



IN THE INDUSTRIAL COURT

AT NAIROBI

CAUSE NO. 2396 OF 2012

CHARLES ADOKO OKODA.....CLAIMANT

VERSUS

PRESTIGE SACCO LTD.....RESPONDENT

JUDGMENT

1. The Claimant herein filed his Claim on 28th November 2012 seeking terminal dues for the termination of his employment with the Respondent. He averred that he was employed in January 1994 as a bookkeeper/accountant and his starting salary was Kshs. 4,000/- gradually increased to Kshs. 30,000/- at the time of termination.
2. The Respondent on its part denied engaging the Claimant on or before January 1994 and averred that the Claimant was employed by the Respondent on 1st July 2010. The Respondent averred that the Claimant's employment was procedurally terminated and his terminal dues paid.
3. The Claimant testified on 23rd May 2013 and stated that he was employed in 1994 for Kshs. 4,000/- a month and this rose over the years and at time of termination his salary stood at Kshs. 30,000/- per month. He claimed that in July 2010 he was issued with a fresh letter of employment. He claimed he had not gone for leave and prior to 2010. He testified that he was given a letter of termination on 12th July 2012 but had not received any request to clarify any of the issues in the termination letter, he had received no warning and the termination issued was subsequently recalled vide a letter dated 19th July 2012. He testified that he received a show cause letter dated 19th January 2011. He replied to the show cause notice letter on 6th August 2012 and a termination letter issued on 10th August 2012.
4. In cross exam, the Claimant conceded that he had not attached any evidence of his employment in 1994 – payslips or letter of appointment and the like. He admitted that the letter dated 19th January 2011 is signed on 23rd July 2012 and reply was expected by 30th July 2012. He admitted that he replied to the show cause letter on 6th August 2012 which was not within the time given in the show cause letter.
5. The Claimant called a former SACCO chairman Mr. Pascal Okumu Misawo who testified that the Claimant was a freelancer. He would come and work and get paid. As a freelancer he was not entitled to leave as he was not on employment.

6. In cross exam he reiterated that the Claimant was not an employee of the SACCO in 1994 and thus could not be entitled to leave. He testified that he was not the SACCO chairman when the Claimant was employed.
7. The Respondent called one witness Mr. Nahason Nganga who testified that he is the current SACCO chairman. He stated that he joined the Respondent and found the Claimant already there as a member. The Respondent testified that the Claimant was not an employee of the SACCO at the time and that the Claimant was employed in July 2010. He stated that the information on the leave application form was filled in by the Claimant and not by management and thus the date of 1994 was filled in by the Claimant. He testified that he signed the letter of termination issued by the Respondent on 12th July 2012 and the recall letter of 19th July. The letter was recalled to allow the Claimant show cause. He denied sending a letter dated 19th January 2011 and instead showed a letter dated 23rd July 2012 headed Show cause. He testified that he did not get a response on 30th July 2012 as expected. The Claimant finally replied on 6th August and the Respondent did not find the response satisfactory and the services of the Claimant were terminated on 14th August 2012. He testified that at the time Mr. Pascal Misawo wrote the letter relied on by Claimant Mr. Misawo had ceased being a SACCO employee on 31st May 2011.
8. In cross exam, the witness testified that the Claimant was working since 1994 offering professional services and was paid his fees for work done. He testified that he gave the Claimant verbal warnings. He denied giving a letter dated 19th January 2011 and stated that he gave a letter to show cause on 23rd July 2012. He did not make any complaint of the alleged forged letter as he never received it and only saw it in this case. He testified that the only record he had was the records showing the employment of the Claimant in 2010 and not before.
9. Parties filed submissions on 13th August 2013, for the Claimant and 18th September 2013 for the Respondent. The Court has considered the evidence tendered, the testimony of witnesses, the submissions made, the authorities cited and the law in coming to this decision. The Claimant alleged he was employed in 1994. He called a witness to support his case but the witness testified that there was no way the Claimant could have been an employee in 1994 as he was a freelancer. The Claimant thus lied both in his pleadings and on oath when he stated that he started his employ with the Respondent in 1994. I find that he was employed in July 2010 as indicated by the letter of employment dated 12th July 2012.
10. The issue that is for determination best captured in the following 2 questions.
 - a. Was the Claimant's termination of employment for good cause?
 - b. If the answer to a) above is in the negative, what dues is he entitled to?
11. The Claimant was given a show cause letter dated 23rd July 2012. There is a letter dated 19th January 2011 which is strange. The Claimant insists he received this letter from the Respondent. The Respondent denies this letter. Mr. Nganga who was the alleged author of the letter dated 19th January 2011 denied signing it and indicated that he signed a show cause letter on 23rd July 2012. There is proof there was a letter done on 23rd July 2012. The Claimant in his reply dated 6th August 2012 replies to the letter seeking him to show cause. If indeed he had received a letter dated 19th January 2011 he would have pointed it out in his reply of 6th August 2011. He is the one who produced the letter of 19th January 2011 and thus is the sole insider on the source of the letter. He tried to hoodwink the Court and the Respondent by producing a document whose authenticity and provenance is highly suspect. The font is not uniform in the two pages of the letter and clearly it was a forgery. Whilst I will not hold him liable on the criminality of the same, it clearly waters down his testimony and goes to his character. Untruths cannot stand and the evidence adduced thus did not accord with the sequence of events the Claimant laid out. He was

given a letter of termination on 12th July 2012 which was recalled on 19th July 2012. He was given a show cause letter on 23rd July 2012 and he was to respond by 17.00 hours on 30th July 2012. No reply was received and the Claimant replied on 6th August 2012. The Respondent wrote a letter of termination on 10th August 2012. There is no indication as to whether the letter of 6th August 2012 was received by the Respondent. In the termination letter, the Respondent states as follows:-

Reference is made to the show cause letter issued to you on 23rd July 2012 requiring your response by 30th July 2012 regarding the following issues.

1. *Your inability to account for a loan amount of Kshs. 60,000/- given to you in August 2007.*
2. *Poor management of members' accounts resulting in inaccurate deductions.*
3. *Hostility and refusal to cooperate with mandated watchdog committees.*

To date you have not responded to the said letter.

In view of the above you neglected to perform your duties hence your actions warrant summary dismissal in accordance with Section 44(4)(c), (d) and (e) of the Employment Act 2007. The Prestige SACCO management has also lost trust and no longer has confidence in your ability to perform your duties to the level of integrity required; however, for purposes of good industrial relations your services with Prestige SACCO are hereby terminated effective 31st August 2012.

The letter went on to state that all dues shall be paid net of statutory deductions, loans advances, shortages and any other deductions that may be lawfully effected.

12. In his testimony, the Claimant asserted that he did not take leave before 2010. In his leave application forms which he produced as evidence in the case, there are no leave days carried over. This is contrary to his allegations that he never went on leave for years. He ought to have in the least demonstrated that he had pending leave days. There is no letter written seeking payment for leave days earned but not taken. As such, there is no proof there were unutilised leave days for the Claimant. His claim in this regard fails.

13. The Claimant having been accorded an opportunity to defend himself before his termination the same cannot be said to be unfair and unlawful. The answer to the first question is in the negative. The Claimant sought salary in lieu of notice, accrued leave, unremitted NSSF dues for 16 years, unremitted NHIF dues for 16 years and severance pay for 15 years plus house allowance unpaid for 17.8 years. He further sought compensation for wrongful loss of employment and also costs of the suit. He is not entitled to any of the prayers sought as he did not prove his case on a balance of probability. His termination was for just cause and his letter of dismissal was clear as to the cause of termination. He is however entitled to receive the salary for days worked in August 2012 less statutory deductions.

Orders accordingly.

Dated and delivered at Nairobi this 18th day of July 2014

Nzioki wa Makau

JUDGE