



IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NO. 385 OF 2013

LAZARUS CHISIKA EZEKIELCLAIMANT

VERSUS

INDIANA BEACH APARTMENT HOTEL LTD RESPONDENT

J U D G M E N T

I N T R O D U C T I O N

The claimant herein brought this suit on 13/11/2013 claiming ksh.444,615 being pay in lieu of accrued leave days plus severance pay for 17 years of service to the respondent.

In her response to the claim, the respondent denied liability and averred that the claimant utilized all his leave days. In addition, the respondent contended that the claimant was not entitled to any severance pay since the termination was not through redundancy but voluntary resignation by the claimant.

On 27/2/2014, the claimant abandoned the claim for accrued leave and retained the claim for severance pay. The suit was heard on 29/5/2014 when the claimant testified as CW1 and the respondent called Muhammed Salim Ahmed as RW1.

CLAIMANT'S CASE

CW1 produced letters of appointment to prove that he was engaged by the respondent on 1-4-1994 on short term contract. That the contract was renewed continuously until 5/1/2000 when he was employed on permanent basis. His salary was ksh.6087 plus house allowance of ksh.930 which was renewed upwards to a maximum ksh.20000 gross as at November 2012 when he voluntarily terminated his own services by a notice dated 15.10.2012. The reason for his resignation was ill health occasioned by the high temperatures at the kitchen where he was working as a chef. His resignation was accepted by the respondent.

In total CW1 worked for the respondent for 17 years for which he prayed for ksh.170,000 as his severance pay. He admitted having been given certificate of service.

On cross examination by the defence counsel, CW1 admitted that after writing the resignation letter on 15/10/2012, he never continued with his work. He further admitted that on 20/11/2012 he got an alternative employment as a supervisor for Severin Sea Lodge. He also admitted that his resignation was voluntarily and not through abolition of his office.

DEFENCE CASE

RW1 is the HR Manager for the respondent. He confirmed that CW1 worked for the respondent from 1994 to 15/10/2012 when he resigned through a letter dated the same date. He contended that CW1 served the resignation letter on 14/11/2012 and deserted work. Thereafter RW1 learnt that CW1 went to work for the Severin Sea Lodge. According to the RW1, CW1 was never declared redundant and he never availed any medical proof to support his alleged occupational illness.

On cross examination RW1 denied ever taking CW1 to hospital. He maintained that CW1 deserted work immediately after serving his resignation notice and never returned until the day he went to collect his certificate of service. He admitted that CW1 worked for the respondent for a period of 17 years.

According to RW1, an employee who voluntarily resigned from work is not entitled to any compensation. After close of hearing both parties filed written submissions.

ANALYSIS AND DETERMINATION

After carefully reading and consideration of the pleadings, evidence and the submissions by the two parties, the only issue for determination herein is whether the claimant is entitled to severance pay.

It is common knowledge that the claimant voluntarily resigned from his employment after serving a termination notice dated 15/10/2013. It follows therefore that severance pay does not accrue from such circumstances. Severance pay is only available under Section 40 of the Employment Act where termination of employment is occasioned by redundancy.

The court could have reached a different decision had the claimant prayed for service pay or gratuity supported by written contract like Collective Bargaining Agreements. The claimant was represented by counsel who did not seek leave to amend the claim before the close of the hearing.

DISPOSITION

For the reasons stated above the suit is dismissed with no order as to costs.

Dated, Signed and delivered this 29th August 2014.

O. N. Makau

Judge