



IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 56 OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 18th September, 2014)

PAUL ODUOR ANGILA CLAIMANT

-VERSUS-

MIKUTRA WATER &

SANITATION CO. LTD RESPONDENTS

JUDGMENT

The claimant herein Paul Oduor Angila filed his memorandum of claim on 17.3.2014 through the firm of Sam Onyango & Co. Advocates. The claimant's case is that on or about 1.6.2007, the respondents employed him as it's Procurement Officer under a 3 year renewable. The contract was to start on 1.6.2007 and end on 30.5.2010. Upon it's expiry, the contract was renewed again 1.6.2010 to 30.5.2013. The 2nd contract expired and was subsequently renewed again for 3 years with effect from 1.6.2013 to 30.5.2016.

Under the prevailing contract, the claimant was entitled to a;

- Basic salary - Ksh 29,200/= per month
- House allowance - Ksh 8,800/= per month
- Medical allowance - Ksh 2,000/= per month
- Airtime allowance - Ksh 2,000/= per month
- 30 days annual leave
- 3 months notice before termination or 3 months salary in lieu thereof
- 31% of basic salary as gratuity at the end of each contract.

However, the claimant avers that on 31.1.2014 the respondents unilaterally and without notice to claimant terminated the claimant's contract without regard to the terms of the contract and without paying him his terminal dues.

It is the claimant's case that under the 1st contract, he was fully paid his gratuity but not leave allowance which is Ksh 25,000/= per year. On the 2nd contract the claimant claims payment of his gratuity which is Ksh 243,172.20/= plus leave allowance of Ksh 29,200 X 3 = Ksh 87,600/= and commuted leave of Ksh 85,323/=, airtime for the entire period = Ksh 72,000/=. On the 3rd contract, the claimant avers that as per his document **No. 4**, he was assured the contract would be renewed and he was asked to continue performing his duties diligently until the time of that confirmation and he went on to serve for 8 months as per his document **No. 4** but this contract was not renewed. He claims leave days equivalent to 1 month's salary = Kshs 29,200/=, leave days totalling 20 days = Kshs 34,129/=, airtime

allowance for the 8 months = Ksh 16,000/=, salary in lieu of notice = 3 X 29,200 = Ksh 87,600/=. He also claims salary arrears under this contract totalling Ksh 278,705/=. His total claim is for Ksh 1,007,544.60/= which he now demands from the respondents.

In cross-examination he told court that his leave was due for 6 years and 8 months and he didn't claim them immediately. He also admits that the 3rd contract was not formally renewed though there was a promise to renew it, on his leave days the claimant avers that he is claiming for the same as the company didn't allow him to go on leave. On airtime, the claimant avers that he was entitled to it as a senior manager but this was subject to approval by the board.

The respondents filed their statement of defence on 10.4.2014 through the firm of M/s Oguttu Mboya & Co. Advocates. They aver that there was no 3rd contract that they entered into with the claimant. They admit owing claimant arrears of Ksh 245,096/= only plus gratuity in respect of the 2nd contract which ended in May 2013.

Upon hearing the evidence of both parties, the issues for consideration are:-

1. **Whether there was any 3rd contract between claimant and respondent**
2. **Whether there was termination of the said contract if any,**
3. **What prayers the claimant is entitled to.**

On 1st issue, the claimant has not exhibited any contract he entered into with respondents. It is apparent that the claimant applied to have the contract renewed in July 2013 but he was informed vide letter dated 23rd July 2013 that the full board met on 3.7.2013 and agreed to defer this request to September 2013. However he was told to continue serving with an assurance that there will be no loss in time or benefits if the contract is renewed.

On 2.9.2013 he was served with another letter which read in part:-

“Following your request to be considered for renewal of your expired contract in May 2013 and subsequent renewal of contract to September 2013 (emphasis is mine). The Board of Directors met and agreed that it be deferred until October 2013.”

On 1st November, he received a similar letter deferring this request to 31st January 2014. Nothing seemed to happen until he received a communication from the company's Managing Director on 31.1.2014 that the contract was expiring on 31.1.2014. Despite the fact that there was no formal contract renewal of this contract from May 2013 to 31st January 2014, the communication from respondents indicated that they had renewed the contract on newer terms ranging from the periods indicated being;

- May 2013 to September 2013
- September 2013 to October 2013
- November 2013 to January 2014.

The total period is = 8 months.

The manner of terminating this contract was not explainable. Since the contract was in piecemeal, the claimant was still entitled to at least his 3 months notice or 3 months salary in lieu of the notice = Ksh 87,600/=.

What prayers then can the claimant be granted? The respondents have admitted owing the claimant salary arrears of:-

1. **Kshs 245,096/=**
2. **Leave allowance under 1st contract = Ksh 75,000/=**
3. **Gratuity under the 2nd contract Kshs 243,172.20/= which at the onset I grant as per their admission.**

The respondents contend that there was no leave not taken by the claimant under the 2nd contract as the policy was that leave not taken should be taken in the year it accrued.

The claimant has not proved to court he sought to go on leave and was denied the same in the 2nd contract. There is however proof that he was paid his leave allowance in the same period and I find he could lose out on leave not taken but he is entitled to his leave allowance during the same period = $29,200 \times 3 = \text{Kshs } 87,600/=$

On airtime, the respondents also acknowledge that claimant was entitled to the same and what was not paid is Kshs 16,000/= on last contract and another Kshs 2,000/= all totalling Ksh 18,000/=, I also award this.

From the above analysis, I find for claimant and I enter judgment for him as follows:-

1. **Salary arrears = Kshs 245,096/=**
2. **Leave allowance under 1st contract = Kshs 75,000/=**
3. **Gratuity under 2nd contract = Kshs 243,172.20/=**
4. **Leave allowance under 2nd contract = Kshs 87,600/=**
5. **Airtime = Kshs 18,000/=**
6. **3 months salary in lieu of termination notice = Kshs 87,600/=**
7. **Prorated gratuity under the 3rd contract = 31% of {8 X 29,600} = Kshs 73,408/=**

TOTAL = KSHS 829,876

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Plus costs

HELLEN S. WASILWA

JUDGE

18/9/2014

Appearances:-

Claimant present

Mumalasi h/b Onyango for claimant present

Ondego h/b Oguttu for respondent

CC. Wamache