



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 1621 OF 2012**

**VICTOR ALI ANZIGARE.....CLAIMANT**

**VERSUS**

**WORLD BICYCLE RELIEF KENYA.....RESPONDENT**

**JUDGMENT**

By Memorandum of claim dated 12<sup>th</sup> September 2012 and filed on 13<sup>th</sup> September 2012 the claimant alleges that the Respondent terminated his employment unlawfully. He seeks the following reliefs:

- a. The termination of the Claimant contract of employment was unfair, unlawful and hence null and void.
- b. The Respondent be ordered to pay the Grievant/claimant terminal dues as enumerated under Clause No. 2(m) in the sum of Kshs.310,000/=.
- c. Interest on (2) above from September 5, 2011 until payment in full at court rates.
- d. The Respondent do issue the Claimant with a Certificate of Service.
- e. The Respondent to pay legal costs in this suit.

The Respondent filed a Statement of Defence on 11<sup>th</sup> October 2012, denying the claim. The Respondent stated that the Claimant's employment was terminated on account of non-performance. The Claimant filed a Reply to the Statement of Defence on 11<sup>th</sup> February 2013.

The Claimant's case was heard on 29<sup>th</sup> October 2013 while the Respondent's witness testified on 16<sup>th</sup> September 2014. Parties thereafter filed written submissions.

The Claimant was represented by Mr. Inyangu instructed by AMELI INYANGU & PARTNERS Advocates while the Respondent was represented by Mr. Ngugi instructed by NGUGI & COMPANY ADVOCATES.

The Claimant who testified on his own behalf stated that he was employed by the Respondent on 16<sup>th</sup> April 2010. He worked for 1 year and 3 months on short term contracts. The last contract was from January 2011 for 6 months. The contract was to expire on 30<sup>th</sup> June 2011. Before the contract expired the Country Director Robert Karanja called the Claimant and Joyce Ndungu who were both Sales

Representatives and promised to give them a longer contract, for 1 year and to include medical cover. When the term of the 6 months contract was coming to an end the Claimant was transferred to Programs Department which had been newly set up as a Programs Officer. The Claimant was given a new job description which did not include selling bicycles. The department was to do programs. The Claimant however still carried out tasks of selling bicycles. The Claimant worked up to 5<sup>th</sup> September 2011 when the Director Robert Karanja told the Claimant to go on leave and not to report back to work until he was called. After 7 days the Claimant called Mr. Karanja who told him he was in a meeting and would call later. Mr. Karanja never called, and did not take the Claimant's calls after that. This forced him to write to Mr. Karanja which he copied to the Director for Africa but there was no response forcing him to institute this suit. The Claimant denied that he was incompetent.

Mr. Dick Waswa, the Respondent's Country Director testified on behalf of the Respondent. He testified that the claimant worked for the Respondent from 1<sup>st</sup> February 2011 and was terminated on 30<sup>th</sup> June 2011. The reason for termination was incompetence as the claimant who was employed to sell bicycles never sold any bicycle for the entire period he was in employment of the Respondent. The claimant was given a hearing before termination. His last salary was paid into his account but came back as the account had been closed. RW1 stated that the money is available for collection by the Claimant. RW1 also stated that the Certificate of Service is also available for collection by the Claimant.

The issues for determination are in my opinion whether there was an employment relationship between the Claimant and the Respondent after 30<sup>th</sup> June 2011, whether the Claimant's employment was terminated unfairly and whether the Claimant is entitled to the reliefs sought.

There is no dispute that the claimant was issued with a contract of employment which covered the period 1<sup>st</sup> January to 30<sup>th</sup> June 2011. It is also not in dispute that the claimant remained in employment until sometime in October 2011.

The letter from Musyoka Annan & company Advocates on behalf of the Respondent in response to the claimant's Advocates demand letter confirms that the claimant was retained in employment after expiry of his contract until September 2011. In the Memorandum of Response the Respondent attached 2 letters dated 7<sup>th</sup> October 2011 under the reference "Expiry of Contract". The second letter "WBR2" offers to pay the Claimant one month's salary in lieu of notice and Kshs.15,238/= in lieu of leave.

For the foregoing reasons, I find that the claimant was in employment of the Respondent upto 7<sup>th</sup> October 2011 when he was verbally terminated from employment by the Respondent.

On the second issue I find that the termination of employment of the Claimant was unfair as it was verbal and the Respondent did not observe the provisions of Section 41 of the Employment Act. I also find that the reason given by the Respondent being expiry of the fixed term contract cannot hold as the fixed term contract expired on 30<sup>th</sup> June 2011 but the Claimant was in employment until 7<sup>th</sup> October 2011, more than 3 months after the fixed term contract expired.

On the remedies sought by the Claimant I find that the Claimant having worked for the whole of September is entitled to the salary for September 2011. Again having been terminated instantly without notice, he is entitled to one month's salary in lieu of notice.

On the prayer for service, I have noted from the Respondent's Appendix "WBR1" that the Claimant was not a member of NSSF or any other retirement benefits scheme. He is therefore entitled to service pay as provided in section 35(5) of the Employment Act.

The Claimant prayed for leave. This has been offered by the Respondent in its letter dated 7<sup>th</sup> October 2011 tabulating the claimant's terminal benefits at **Kshs.15,238/=**. I award him the said sum on account of annual leave.

The Claimant further prayed for compensation equivalent to 12 months' salary. Having been in

employment for just about 13 months, I find 2 months' salary as compensation to be reasonable and I award him the same. The Respondent will also issue the Claimant a Certificate of Service as admitted in the Defence.

I award the Claimant costs of this suit and interest on decretal sum at court rates from date of Judgment to date of payment in full.

In summary I award the Claimant the following:

- |   |                               |
|---|-------------------------------|
| 1. Salary for September 2011                    | Kshs.20,000                   |
| 2. Pay of 1 months' salary in lieu<br>Of notice | Kshs.20,000                   |
| 3. Pay in lieu of Annual leave                  | Kshs.15,238                   |
| 4. Service Pay at 15 days salary                | Kshs.10,000                   |
| 5. Compensation 2 months' salary                | <u>Kshs.40,000</u>            |
| Total   | <b><u>Kshs.105,238.00</u></b> |
| 6. Certificate of Service                       |                               |
| 7. Costs and interest                           |                               |

Orders accordingly.

Read in open Court this 16<sup>th</sup> day of December, 2014

**HON. LADY JUSTICE MAUREEN ONYANGO**

**JUDGE**

**In the presence of:**

Ms. Makanja holding brief for Mr. Iyangu for Claimant

No appearance for Respondent