



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAKURU
CAUSE NO. 70 OF 2014

SYLUS SABWA GUNYANYI

CLAIMANT

v

STYLE INDUSTRIES LIMITED

RESPONDENT

JUDGMENT

1. Sylus Sabwa Gunyanyi (Claimant) alleges unfair termination through a Memorandum of Claim filed in Court on 21 March 2014. He seeks one month pay in lieu of notice, salaries for January to March 2014 and 12 months compensation for unfair termination all totalling Kshs 161,567/-.

2. Style Industries Ltd (Respondent) filed a Response on 22 May 2014 contending that the Claimant was on a fixed term contract which lapsed on 21 January 2014.

Claimant's case

3. The Claimant's case is that he was employed by the Respondent as a general worker on 11 February 2013, and that he served until 17 March 2014 when he was dismissed.

4. On the circumstances surrounding the separation, the Claimant stated that on 22 January 2014, he received a call from his uncle that his father was ill at Mukumu Hospital and he therefore sought for leave on 23 January 2014, in writing and the leave was granted.

5. He stated that on 27 January 2014 he reported back to work and at around 10.00 am he received a call his father had died. He therefore applied for leave on 28 January 2014 and while at home, the Respondent's Human Resources Manager called to inform him that he should bring a copy of the burial permit, father's identity card and letter from Assistant Chief on resumption of duty.

6. The Claimant stated that he resumed duty on 17 February 2014 with the documents and that while at work he fell sick and informed the Human Resource Officer who gave him Kshs 3,000/- to go seek medical attention and that he went to hospital.

7. The doctor he consulted sent him to Nairobi and that he was given sick off (SSG 3) and that he reported back to work on 28 February 2014 and informed the Human Resource Officer he would go for another injection on 3 March 2014.

8. He further stated that when he resumed duty on 4 March 2014, the Human Resources officer told him his services were no longer needed and that he would not be paid.

9. The Claimant sought assistance from his senior supervisor and another senior officer on 17

March 2014, but was issued instead with a certificate of service.

10. On why the termination was unfair, the Claimant stated that he was not given notice.

11. On cross examination, the Claimant stated that he was on 3 months fixed contracts which were renewed severally despite there being no provision for renewal.

12. He further admitted that his last contract expired on 21 January 2014 but that he started a new one on 22 January 2014, though he did not have a written copy because the contract documents were issued towards the end of the contract period.

13. On the illness issue, the Claimant stated that he went to the Rift Valley Provincial Hospital and Primed Medical Centre in Nairobi and that the sick off he was given was from 21 February 2014 to 4 March 2014.

14. He further confirmed that employees signed an attendance record and stated that the documents he had annexed to the Memorandum of Claim were genuine.

Respondent's case

15. The Respondent called its Human Resources Officer, Evans Wanyoike Karanja to testify.

16. He stated that the Respondent had 148 contract employees in January 2014 and that the employees were on 3 month fixed term contracts.

17. Regarding the Claimant, he stated that he was employed on 23 April 2013 on 3 month fixed term contract. When the contract expired, the Claimant was given other 3 month fixed term contracts, the last one dated 22 October 2013 and which expired on 21 January 2014.

18. He further stated that on 7 March 2014, he called the Claimant to report on 10 March 2014 to start a new contract but the Claimant never turned up despite agreeing he would report back. The Claimant only turned up on 17 March 2014, to collect certificate of service.

19. He also stated that the certificate of service erroneously indicated the Claimant's period of service as April 2013 to March 2014.

20. The witness also stated that according to the attendance records, the Claimant was last at work on 21 January 2014.

21. He denied the Claimant's contract was prematurely terminated and stated several contracts were not renewed on expiry in January 2014.

22. He stated that the Claimant's salary for January 2014 was paid through the bank.

23. On cross examination, he stated that the Claimant's contract expired and he was not dismissed.

24. The Claimant filed submissions on 7 November 2014. Respondent's submissions were not on record by today morning.

Issues for determination

25. Like any other complaint of unfair termination, the main issues arising for determination are whether there was termination, whether the termination was unfair and if so, appropriate remedies.

26. However, in the present case, the Respondent contends that the Claimant's contract expired. The Court will address this issue first.

Evaluation

Expired contract or dismissal

27. The Claimant did not deny that he was on fixed term written contracts. The last such contract was dated 22 October 2013 and was to expire on 21 January 2014. Therefore there can be no doubt that this contract expired as mutually agreed.

28. But the Claimant asserts that he started a new contract on 22 January 2014 and that the Respondent used to issue the written contracts towards the end of the contract period.

29. The Claimant was not interrogated by the Respondent on this assertion.

30. Both the Claimant and the Respondent's witness agreed that attendance records were maintained. The Respondent's witness stated that according to the attendance records, the Claimant was last marked as on duty on 21 January 2014.

31. These attendance records were not produced. Were the records produced, that would have marked the end of this discussion, as it would have clarified whether Claimant was at work on 22 January 2014.

32. In light of the failure to produce the attendance records and the uncontroverted testimony by the Claimant that he was on duty on 22 January 2014, the Court finds that despite the non production of a written contract, the Claimant began a new contract on 22 January 2014.

Whether Claimant was terminated

33. The Claimant's testimony is that he was dismissed on 4 March 2014 by the Human Resources Officer. Prior to this he had been in the village and had been advised by the officer to present copies of his father's burial permit and letter from the local administration on resumption.

34. The Respondent did not deny this evidence or that the Claimant presented them. On resumption of duty, the Claimant stated he fell sick and sought medical treatment. Documents were produced to show sick off and medical receipts dated 17 February and 19 February 2014 from Rift Valley Provincial General Hospital. The Respondent suggested the documents were fake, but there was no material placed before Court to prove they were not genuine.

35. Considering these documents and the evidence, the Court is satisfied that the Claimant's services were terminated.

Whether the termination was unfair

36. The Respondent's line of defence was that the Claimant's contract expired and so it was not a case of termination. That defence has been rejected.

37. In the event, the Respondent did not even attempt in the alternative to lead any evidence as to compliance with sections 35 and 41 of the Employment Act, 2007.

38. Further there was no attempt to prove any reasons for dismissal or that the reasons were valid and fair. The Court therefore finds the termination was unfair.

Appropriate remedies

One month salary in lieu of Notice

39. Pursuant to section 35 and 36 of the Employment Act, the Court would award the Claimant Kshs 10,379/- being one month salary in lieu of notice.

Salary January to 17 March 2014

40. The Court has reached the conclusion that the Claimant was terminated on 4 March 2014. He would be entitled to wages from January to 4 March 2014.

41. The Respondent's witness had stated that the Claimant's wages for January 2014 were paid through the bank. No evidence of this fact was produced.

42. The Court would find for the Claimant in the sum of Kshs 20,768/-.

Compensation

43. This is one of the primary remedies for unfair termination. It is a discretionary remedy. The discretion however is fettered.

44. The Claimant served the Respondent for about one year in cumulative terms. Considering the length of service, the Court would award him the equivalent of one month wages of Kshs 10,379/- as compensation.

Conclusion and Orders

45. The Court finds and holds that the Claimant was terminated and the termination was unfair and awards him and orders the Respondent to pay him

(a) One month pay in lieu of Notice	Kshs 10,379/-
(b) Salary January to 4 March 2014	Kshs 20,768/-
(c) One month wage as compensation	Kshs 10,379/-
TOTAL	Kshs 41,526/-.

46. Claimant to have costs assessed at Kshs 15,000/-.

Delivered, dated and signed in open Court in Nakuru on this 5th day of December 2014.

Radido Stephen

Judge

Appearances

For Claimant Mr. Kairo instructed by Nancy Njoroge & Co. Advocates

For Respondent Mr. Masese, Senior Legal Officer, Federation of Kenya Employers