



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 660 of 2012

TIOKO EKADELI.....CLAIMANT

VERSUS

STRAGOLLEN LTD.....RESPONDENT

JUDGMENT

The claimant is Tioko Ekadeli. The Respondent is Stragollen Limited.

The claimant filed the memorandum of claim on 19.04.2012. He stated in the memorandum as follows.

1. That he was employed by the Respondent on 1st May 1990 as a guard at a monthly salary of Ksh.3,600.00/=
2. That he served diligently until 21.03.2000 when the Respondent wrongfully and unlawfully terminated him without any notice and refused to pay him his terminal benefits. The terminal dues included severance pay, 1 month payment in lieu of notice and unpaid leave making a sum of Ksh.51,100.00/=.
3. That the court should take judicial notice that many employers, like in this case, hardly ever give letters of appointment to their employees and the claimant's contract was founded on oral contract.
4. At termination on 23.03.2000 the Respondent did not give the Claimant any notice for termination and the termination was therefore unprocedural and unfair.

The claimant therefore prayed for an award against the Respondent for:

- a) The sum of Ksh.51,100.00 as particularized in the memorandum of claim;
- b) Maximum compensation of 12 months amounting to Ksh.43,200.00/=;
- c) Cost of the suit;
- d) Interest; and
- e) Any other relief as the Court may deem just

The Respondent's Response was filed on 09.07.2012 and it stated as follows:

- a) That there had been proceedings between the parties in a competent court of law.

- b) That the Claimant was an employee but he was not a guard but then he was employed as a general worker.
- c) That the claimant was dismissed in March 2000 for gross misconduct. He was paid the terminal dues in accordance with the collective Agreement between Kenya Tea Growers Association and Kenya Plantation and Agricultural Workers' Union then in force as per the collective agreement that was attached and marked "AGI" on the response.
- d) That the Respondent paid Ksh.8,530.85 to Kiambu Labour officer's office on 21.03.2000 via receipt no. 03422 and a further sum of Ksh.3,394.00/= was paid to the Labour Office via receipt no. 032429 as the claimant's final dues as per the copies of the receipts marked AG 2 & 3 on the response.
- e) That by a letter dated 28.05.2012 from the Kiambu County Labour office marked AG 4 on the response the office confirmed that the claimant was paid the Ksh.8530.85/= vide voucher No. 0077 and Ksh. 3394.00 vide voucher No. 0074.
- f) That the Respondent's claim was statute barred by the provisions of section 90 of the Employment Act, 2007 and section 4 of the Limitation of Actions Act Cap 22 Laws of Kenya. Accordingly, the Respondent prayed that the claimant's claim against it be dismissed with costs.

The cause came up for hearing on 25.10.2012. The Respondent did not call any witness. The claimant testified to support his case as follows:

- a) That he's from Lodwar county.
- b) The Respondent employed him in 1990 as a guard and groundsman but performed wide ranging duties including plucking tea leaves.
- c) In March 2000 his employment was terminated. He was not given any letter or termination notice. The claimant's residential house was broken into, his wife evicted and his property damaged.
- d) He was taken to the stores. He was shown his file at Industrial Area but refused to sign for anything because he had not been paid his terminal dues.
- e) He did not have any livelihood and his children dropped from school. He was treated very inhumanely. He had not offended the respondent in any way.
- f) He worked for the Respondent for ten years.
- g) He accepted signing a written contract engaging him as a tea plucker with effect from 19.08.1998 and which stated that the Kenya Tea Growers' Association and the Kenya Plantation and Agricultural Workers union collective agreement would apply. The written contract was marked exhibit C1 . The contract was terminable by either party giving a one month notice or one month wage in lieu of the notice.
- h) During cross-examination the claimant was shown a termination letter dated 18.03.2000. He stated he was illiterate but probably there may have been such a document. The letter marked exhibit C3 stated as follows:

"Mr. Tioko Ekadeli

I D NO. 3838380

Payroll No. 03

DISMISSAL FOR GROSS MISCONDUCT

Dear Sir,

On 18th March 2000 you used abusive and insulting language to me in front of many employees.

You are being paid on the days worked in March 2000

Pro rata leave pay for yourself. Bus fare for yourself and wife.

Arrears for 1999 as per the agreement between K.P.A.W. U. and KTGA (Limuru Branch) 50% now and 50% in 2001 in the middle of March 2001.

Please arrange to collect your dues from Kiambu Labour Office.

Please arrange to vacate your room immediately.

Yours faithfully,

signed

Andrew Gordon

(Managing Director)

C.C. The District Labour Officer

*P.O Box 111
KIAMBU
The Executive Officer
Kenya Tea Growers Association
KERICHO”*

- i) That he has not been a member of any Trade Union.
- j) He acknowledged he had been paid Ksh.8,530/= and later Ksh.3,395 by the Kiambu office.
- k) The claimant stated that his major claim was for unfair dismissal.

The Respondent's Counsel submitted as follows:

- a) That the claimant's case was statute barred under section 90 of the Employment Act, 2007 because the claimant was fired in March 2000.
- b) The claimant and Respondent were parties in Resident Magistrate's Court Civil Case No. 293 of 2008 by which the issues in dispute in this cause were decided and claimant's case dismissed on an unknown date and the ruling was at Kiambu courts.

The court has considered the pleadings, the evidence on record and the submissions made. The following are the court's findings:

- a) The parties appear to have invoked the conciliation process under section 87 (1) of the Employment Act. In particular, the Respondent referred the matter to the labour office in Kiambu District. The court also observes that the Respondent was under a misconceived impression that the claimant was a member of a trade union so that the claimant appears to have moved under the provisions of Labour Relations Act, 2007 (previously the Trade Disputes Act) to deal with the claimant's case. Be it as in may, the court finds that in absence of the report or decision by the Ministry of Labour arising out of the respondent's action to involve the Ministry, it cannot be said that time started running because, in that circumstance, time would

only run with reference to the date of the Ministerial decision. Thus the court finds that the claimant's cause is not time barred under section 90 of the Employment Act, 2007 or the Limitation of Actions Act.

- b) The proceedings in Civil Case No. 293 of 2008 alleged to have been between the parties in the Resident Magistrate's Court in Kiambu have not been produced and the findings in that case have no bearing to this case in view of absence of the relevant proceedings.
- c) The court finds that by the claimant's admission he was paid and he received a sum of Ksh.11,924.00/= from the Respondent through the Kiambu District Labour Officer being last month salary of Ksh.3394.00/= for up to 18th March as per the Ministry's receipt No. 032420 dated 18.04.2000 and further Ksh.8530.85 as per receipt No. 032422 dated 21.03.2000 being pro rata leave pay and bus fair for claimant's wife and the claimant as per the letter by the Respondent dated 18.03.2000.
- d) The court finds that the Respondent paid the claimant a wage of Ksh.3394.00 for up to 18th March 2000. Using that Respondent's evidence, the court finds that the claimant's monthly salary was therefore Ksh.5845.20/= . In arriving at this figure the court has taken into account that the claimant did not, with clarity, appear to recall his monthly pay since he stated sometimes he would be paid as an acting watchman and also on the basis of the kilos of tea plucked. The only evidence therefore is the Respondent's declared pay for up to 18th March 2000 from which the court has computed the monthly wage.
- e) The court finds that the claimant was an employee on a monthly wage so that he would be entitled to the 28 days notice for termination under section 35 (1) (c) of the Employment Act, 2007. The court finds that in absence of the notice, he is entitled to Ksh.5845.20/= being a one month notice.
- f) The claimant was entitled to a hearing and notification under section 41 of the Employment Act, 2007 before the termination. In alternative, the Respondent was required to prove the reasons for termination as provided for in section 45 of the Act. The Respondent did not produce evidence of the alleged abusive and insulting language on the part of the claimant and as alleged in the termination letter. The court therefore finds that the termination was unfair and the court awards the claimant the maximum twelve months gross salaries making a sum of Ksh.70142.40/= per month.
- g) The claims for unpaid leave and severance pay shall fail as the same have not been proved.

Judgment is therefore entered for the claimant against the Respondent for:

- a) Payment of a sum of sum Ksh.75,987.60/= only plus interest at court rates from the date of the judgment till full payment; and
- b) Payment of the costs of the case.

Delivered in court at Nairobi on 2nd day of November 2012

Byram Ongaya
Judge