



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT 651 OF 2004

JOHN D. NTORURU PLAINTIFF

VERSUS

KENYA AIRPORT AUTHORITY DEFENDANT

JUDGMENT

The Plaintiff John D. Ntoruru, was an employee of the Defendant at Moi Airport Mombasa as a Ground Flight Safety Officer until 24.8.1999 when his services were terminated. By a plaint dated 10.3.2004 he claims against the Plaintiff, a sum of **Kshs.696,032/=** being what he calls, the balance of terminal benefits arising from the wrong termination of his employment. He also claims general damages arising from a defamation of his name and character by the defendant by the latter using false and malicious reasons to terminate the Plaintiff's service.

The Plaintiff pleaded that the grounds the defendant used to terminate his services were false and malicious and that the said grounds were maliciously applied against him. He pleaded that he had earlier filed a case in the Industrial Court which case had confirmed his innocence and lack of grounds upon which the defendant actually terminated the Plaintiff's employment. The Plaintiff further averred that as a result, the Industrial Court ordered that he be paid terminal benefits amounting to **Kshs.153,456/=** and be given a clean certificate of service showing the true reasons for termination.

That instead of the defendant properly proceeding to calculate the Plaintiff's benefits, which should have amounted to **Kshs.849,488/=**, he instead, and in collusion with the Plaintiff's labour union, and without consulting him, entered a consent Judgment at **Kshs.153,456/=**, thus leaving out a balance of **Kshs.696,032/=** which forms his claim in this court. That the defendant furthermore issued a Certificate of Service to the Plaintiff wrongly stating that the latter had been terminated on disciplinary grounds contrary to the findings of the committee set up by both sides and affirmed by the Industrial Court. That in publishing in the Certificate of Service that the Plaintiff had been terminated on disciplinary grounds, the defendant deliberately maligned his name to whoever had opportunity to read it. For this reason the Plaintiff sought general damages.

In his sworn testimony before the court the Plaintiff supported his pleadings although he would have done better to indicate the list of people to whom the certificate was published.

In its defence the defendant denied the Plaintiff's claim. It stated that it had proper and lawful reasons to terminate the Plaintiff's employment. It asserted that the Plaintiff had misconducted himself and that his work performance was below the expected standard. It further averred that the Plaintiff had regularly absented himself from his duties, had demanded bribes from pilots, had withdrawn airport passes of

certain members of staff of Kenya Aerotech Limited, and had generally caused substantial detriment to the reputation of his employers, the defendant.

The defendant also averred that the dispute before the court had been fully resolved and settled when it paid the Plaintiff a sum of **Kshs.153,456/=** under the award of a competent court, to wit, the Industrial Court of Kenya. It termed the claim res judicata the Trade dispute Cause No.82 of 2002.

Thirdly the defendant reiterated the cause for terminating the Plaintiff's employment as disciplinary for misconduct and denied any defamation which claim in any case, was not pursued in the Plaintiff's evidence before this court.

I have carefully perused all the relevant documents in this suit and all the submissions made by both parties. I will first deal with the issue as to whether this suit is barred by the rule of res judicata.

This claim was definitely heard and determined by the Industrial Court in Trade Dispute Cause No. 82 of 2002. That court had jurisdiction to hear and determine a cause such as this. It heard the matter on receiving submissions from the two parties herein. It concluded in its award that the Plaintiff herein was not at a fault and that the termination of his employment was unlawful. It ordered that the Plaintiff be given his terminal benefits to be calculated in accordance with the Collective Bargaining Agreement which would include an equivalent of nine (9) months basic salary as compensation for wrongful loss of employment. The court had also ordered that the Plaintiff herein be given a certificate of service as provided under S.18 of the Employment Act. These reliefs in my view were within the jurisdiction and competence of that court which made them. No other court in my findings, would be competent to reverse or vary the orders made except under the provisions of the law under which that court operates.

To that end, the Plaintiff was under obligation to approach this court only under a specific provision of law which gives this court jurisdiction to revisit that court's findings. What the Plaintiff is saying effectively is that this court has either independent parallel jurisdiction to hear this claim again or has appellate or reviewing jurisdiction to do so. He did not point to the law that would justify any of the above alternative jurisdictions. While I am accordingly aware that the High Court has a reviewing jurisdiction on any lower tribunal like the Industrial Court, the Plaintiff did not approach this court through that route.

Furthermore, the Plaintiff had freedom to choose which tribunal was competent to resolve his case. He could from the beginning have approached this court which always has jurisdiction, but he decided to go through the Industrial Court. That court fully and finally decided all the relevant issues except the issue touching on the issuance of the certificate of service. In the circumstances this court has no jurisdiction to interfere with the award of the court even where the court would think that the Plaintiff deserved a better award.

In the same breath I do concur with the defendant that this claim is res judicata the Trade Dispute Cause No. 82 of 2002. In the above cause that Court which had competent jurisdiction finally decided the issues of

- (a) Whether termination of employment was rightful or wrongful; and**
- (b) The level of the amount of compensation due to the Plaintiff for wrongful dismissal.**

A perusal of the pleadings herein confirms them to be the same issues except the one of general damages for possible defamation, which was to be pursued by the Plaintiff in this case before me. There is also a conclusiveness of section 17 of the Trade Disputes Act Cap 234; it makes the awards of that Court final and complicates the Plaintiff's situation.

In conclusion and in the alternative, the only difference brought out in his evidence on same issues as those dealt with by the Industrial Court is the size of the compensation he sought to be awarded. His case is that that court should have applied a period 48 months to arrive at the final amount due to him as

compared to 9 months the Industrial Court had applied. He gave no evidence to prove that he was entitled to 48 month's compensation. The claim for a higher figure of compensation over and above the sum of **Kshs.153,456/=** awarded by the Industrial Court, accordingly, has to fail.

On the other hand, the Plaintiff proved very clearly that the defendant, without lawful cause and contrary to the directions and finding of the Industrial Court issued him with a certificate of service based on a false and malicious ground. The Industrial Court found that the grounds upon which the Plaintiff's services were terminated were not disciplinary. And yet the Defendant in disregard of the finding based the certificate of service on such ground. That was very calous of the Defendant. Indeed it can be said that the Defendant acted contemptuously of a court order.

I have carefully considered the Defendant's malicious action. It took place after the court's Judgment and in defiance of it. It forms part of the Plaintiff's claim and was not denied; rather it was recklessly admitted by Mr. John Ngara Mugo, the Jomo Kenyatta International Airport's manager. To that end the defendant had no defence to the claim that it issued and published the offending certificate of service to every employer from whom the Plaintiff has sought employment. Indeed the Plaintiff claimed and it would be difficult to deny, that each time he produced the certificate in search of employment, it scared the prospective employer and he lost any prospects for new employment. The result is that the Plaintiff who is a Professional Grounds Flight Safety Officer, was reduced to selling small and various items in a market kiosk or stall. He said that he has no prospects of getting the kind of employment for which he was trained. His claim is plausible and credible.

I have considered this part of the claim. I am satisfied that it has been proved on the balance of probability.

Doing the best I can in the circumstances of this case, I take into consideration the fact that his gross monthly pay was approximately **Kshs.12,000/=**, at the time when his employment was terminated. He still had over 20 years during which he would have held a gainful employment. The result is that I award the Plaintiff a sum of **Kshs.300,000/=** as general damages. The Plaintiff will also be entitled to a clean certificate of service from the date of termination of his employment.

ORDERS:-

1. The Defendant shall pay the Plaintiff general damages assessed at **Kshs.300,000/=** with costs.
2. The Defendant shall forthwith issue the Plaintiff with a clean certificate of service with effect from the date of termination of his employment.
3. The Plaintiff's claim over and above **Kshs.153,456/=** already received by the Plaintiff for wrongful dismissal is hereby dismissed without costs.

Dated and delivered at Nairobi this 7th day of October, 2008

D.A. ONYANCHA

JDUGE