



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 1073 of 2005

JAMES NGUGI..... PLAINTIFF

VERSUS

THE TOWN CLERK.....1ST DEFENDANT

THE CITY TREASURER.....2ND DEFENDANT

THE CHIEF ADMINISTRATIVE OFFICER.....3RD DEFENDANT

JUDGMENT

JAMES NGUGI sued the Town Clerk, City Treasurer and the Chief Administrative Officer of Nairobi City Council seeking

(a) “Reinstatement after wrongful dismissal”,

(b) “Payment of salary arrears deducted during interdiction period, plus interest amounting to Kshs.224,084/= and demand for payment of the July 2005, salary, amounting to Kshs.10,339/40”.

The defendants did not file a defence and on 13.10.2005, an interlocutory judgment was entered against them in default of defence.

The case moved to formal proof with the plaintiff stating that whilst working in Dandora as a Clerk with the City Council, he was served with a letter to show cause. This was on 16th November 1999. The letter was dated 8.11.1999. He produced it in court as an exhibit. Allegations of bribery had been given against the plaintiff who was given 10 days to respond.

He responded in writing the same day he received the letter, and denied the allegations of bribery. The plaintiff continued working and in March, 2000, he received a payslip showing that he would only be paid ½ his basic salary. He enquired, but got no explanation and instead he was transferred to the City Hall, the Service Charge Section. He reported and continued working in that section, earning ½ pay. This was from February 2000, to June 2005. He produced the original payslips from March 1999 to February 2000.

His basic salary was Kshs.4,640/=, plus house allowance of Kshs.2,200/= making a total of Kshs.6,840/- p.m. The plaintiff was paid ½ salary from February 2000 to June 2005, as the basic salary was reduced to Ksh.2,320/=, not the house allowance. He was therefore earning Kshs.450/= p.m. The plaintiff learnt vide a letter dated 7.9.2000, that he had been interdicted. He produced this letter as Ex. 5.

The interdiction letter was dated 18.1.2000, signed by the Town Clerk. He produced it as Ex. 6. The plaintiff appealed against the interdiction as he felt he had not committed any offence. He got no response to the letter of appeal.

The plaintiff produced a letter dated 7.9.99, signed by 3 officers, i.e. S.J Mithiani, E.N Wambugu and W.L Omondi. This was the letter of complaint of bribery and inflation of loans, against him. The plaintiff had by now referred the complaint to the Union which was handling it.

The plaintiff also produced council minutes dated 4.9.2002 in which a decision was made that his matter should be handled administratively, but it never was and the plaintiff was finally dismissed vide a letter dated 12.5.2005. He had been on ½ pay from February 2000 to June 2005. His appeal too was rejected and the plaintiff therefore filed this suit to pursue his rights.

He asked the court to quash the wrongful dismissal, and prayed that he be reinstated into the payroll and he paid salary arrears and the ½ salary which was withheld. The plaintiff worked out his entitlements which he produced as Ex. 18.

The plaintiff explained, during questioning that he filed an affidavit to support the plaint, and not a verifying affidavit. He confessed that he did not know the difference between the 2 as he was acting in person.

The defendant did not adduce any evidence, but filed written submissions which now form part of this case. The plaintiff also filed written submissions. He referred to and commented on all the exhibits he produced in court. In their written submissions, the defendants faulted the plaintiff for filing a “**supporting**” affidavit instead of a verifying affidavit. This they submitted was not in compliance with the legal requirements as contained in Order VII Rules 1 and 2 of the Civil Procedure Rules.

The defendants also submitted that the plaintiff’s case disclosed, “no reasonable cause of action”, as he did not sue the City Council, but instead sued the 3 officers.

The defendants further stated that the plaintiff’s dismissal was not unlawful as he had been given an opportunity to defend himself and to appeal, which he did.

They termed the plaintiff’s claim for Kshs.224,084/= being aggregate of half salary deducted as “baseless” as the law stipulates that a public officer under interdiction is entitled to only half pay during the period of interdiction, and that if interdiction is lifted, the employee cannot claim the balance of his salary.

The defendant’s counsel did not, however, give details of the law he was referring to above. He also opposed the request by the plaintiff of Kshs.10,339/40 for the month of June 2005 as the plaintiff said he was terminated in May, 2005.

The plaintiff gave evidence on oath and was subsequently cross examined. The defendants did not file a defence and did not adduce any evidence in court, except for the written submissions, which are obviously not tested on cross-examination or otherwise. I therefore find that the plaintiff’s evidence has not been challenged in that though the defendants wrote and signed letters making allegations against the plaintiff, they did not come to court to prove the basis of those allegations. Without this evidence, the plaintiff’s evidence remains unchallenged.

I have gone through the Memo of Appearance filed by “N.M MUNG’ALLA ADVOCATE, for the defendant”.

I note that the advocate, who seem to have entered appearance for only a defendant, and not defendants, did not enter such appearance “in protest” to the fact that the plaint was accompanied by ‘a supporting affidavit’ as opposed to “a verifying affidavit”.

With no evidence from the defendant to rebut the plaintiff's claim, I find that the plaintiff's dismissal could have been wrongful, in the circumstances, and I find so.

On the issue of the plaint not being accompanied affidavit by a verifying affidavit as opposed to a supporting affidavit, I note that the defendant did not apply to the court to strike out the plaint, in accordance with Order VII R 3. Instead the defendant's counsel chose to make final submissions on that point. This to me showed that counsel on record was not serious with this issue, but was either just trying his luck, or hanging on this point as the last straw to ensure that the court throws out the plaintiff's claim, after having failed to defend the suit. I therefore reject the manner in which counsel handled this matter when he had an option in law, which he could have used to persuade the court to strike out the plaint.

All in all, and having found that the summary dismissal of the plaintiff was wrongful in the circumstances of this case, I find judgment for the plaintiff against the defendant. However, I decline to order the reinstatement of the plaintiff back to his former employment. Instead, I direct the defendant to pay, the plaintiff, from the funds of the City Council of Nairobi, the office of the Town Clerk on whose letter heads the letter of "Summary Dismissal" was written, the plaintiff's half pay held from February 2000 to June, 2005.

The plaintiff did a computation of the money involved and found it to be Kshs.22,4,285/= as per documentation he produced as Ex. 18. No evidence was adduced to counter the computation of the salary deductions. In the circumstances, I direct that the plaintiff be paid that sum.

I further decline to grant prayers 1(c), 2,3 and 4, but I award the plaintiff the costs of this suit, as against the Nairobi City Council, the employer of the Town Clerk, City Treasurer and Chief Administrative Officer.

Dated at Nairobi this 12th day of July 2007.

JOYCE ALUOCH

JUDGE