



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 249 OF 2016

PAUL OMONDI OPIYO.....CLAIMANT

VERSUS

AAR HEALTHCARE KENYA LIMITED..... RESPONDENT

JUDGMENT

1. The claimant filed suit on 29/8/2016 praying for an Order in the following terms:-

- (a) The Court do find that the termination of employment of the claimant was wrongful, unfair, and unlawful.
- (b) Award general and Exemplary damages for the wrongful termination.
- (c) Order grant of Certificate of Service to the Claimant by the respondent.
- (d) Interest and costs.

2. C.W.1, the claimant testified that he was employed by the respondent as the Pharmacy in charge on 1/1/2011 until 1/1/2016 when his employment was terminated.

3. On 11/5/2016, the claimant received a Memorandum from the Health Care Manager Kisumu asking for a written explanation on how some drugs were dispensed between 24/11/2015 and 5/2/2016 in respect of a patient named Pamela Ominde Apondi.

4. The claimant responded to the said letter and was served with a letter dated 17/5/2016 requesting him to attend a disciplinary hearing on 23/5/2016.

5. The claimant attended the disciplinary hearing and defended himself. On 2/6/2016, the claimant received a letter of dismissal.

6. The claimant earned Kshs.60,000 per month for the duration of employment.

7. C.W.1 adopted the witness statement, filed on 29/8/2016 as her evidence in Chief. C.W.1 denied the accusations that she had failed to follow the standard operating procedure in dispensing and posting drugs on 2/12/2015 and subsequent days in the month of December, 2015.

8. C.W.5 further denied that she had failed to inform the company of the transaction and engaging in malpractice and negligence thereby exposing the respondent to risks and loss.

9. C.W.1 prays the Court to find that the allegations were not valid and grant the prayers sought in the suit. C.W.1 produced exhibits marked '1' to '7'.

Response

10. R.W.1 Dr. Valentino Khoja testified for the respondent that he was presently the Health Centre Manager of the respondent. That he adopted a witness statement filed on 20/7/2017 as his evidence in Chief and list of documents filed on 23/9/2016 marked '1' to '10'.

11. R.W.1 testified that C.W.1 as Pharmacy in charge signed AAR Oath on Code of Ethics for AAR doctors.

12. That CIC Insurance submitted a query to the respondent marked Exhibit '3' concerning their client named Pamela Ominde Apondi

treated at AAR Outpatient Centre in Kisumu on various dates.

13. That the said client according to CIC had been issued with prescription only drugs without a charge for consultation. That two (2) similar drugs were given on 16th and 17th of December, 2015 to the same patient.
14. CIC also complained of over subscription to the patient which meant the patient was given more drugs than she was entitled to. CIC attached a summary of the questionable transactions.
15. R.W.1 testified that the respondent asked C.W.1 to show cause regarding the complaints by CIC. The Show Cause letter was produced as exhibit '4'. That C.W.1 responded to the Show Cause letter but the response was not satisfactory. That C.W.1 admitted the queried transactions. That C.W.1 was called to a disciplinary hearing where she defended herself.
16. R.W.1 stated further that, it transpired that the patient did not have an Insurance cover when the drugs were issued. That the claimant postdated the insurance to reflect that drugs were issued after the cover had been renewed.
17. R.W.1 explained that this is what raised the eyebrows because it looked as if drugs were all issued on the same day.
18. R.W.1 added that the respondent was forced to refund Kshs.13,150 to CIC insurance for the mistake made by C.W.1.
19. R.W.1 told the Court that C.W.1 was found guilty of failing to follow standard operating procedure for dispensing drugs and his employment was therefore terminated for a valid reason following a fair procedure.
20. R.W.1 was candid and forthright in his testimony. Close-cross examination by Counsel for the claimant did not dent the credibility of his testimony before Court.
21. C.W.1 largely admitted the transgressions he committed to favour a patient who was high ranking in the County Government of Kisumu.
22. C.W.1 did not dispute that he was subjected to a hearing as described by R.W.1.
23. The Court finds that the respondent complied with sections 41, 43, 44, and 45 of the Employment Act, in that it terminated the employment of the claimant for a valid reason following a fair procedure.
24. The suit lacks merit and is dismissed.
25. In the final analysis, the Court makes the following Orders:-
 - (a) The suit is dismissed with no Order as to costs.
 - (b) The respondent to provide a Certificate of Service to the claimant within 30 days of this judgment.

Dated and delivered at Nairobi this 28th day of January, 2021.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this judgment has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Ojulo for Claimant

Mr. Mbichire for Respondent

Chrispo: Court clerk.