



REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
NAIROBI**

CAUSE NO.1288 OF 2018

DEXTER OMOLLO.....CLAIMANT

VERSUS

OLE SERENI LIMITED.....RESPONDENT

JUDGEMENT

On 1st March, 2015 the claimant was employed by the respondent as a Purchasing officer vide letter dated 13th November, 2014. He worked until 26th April, 2018 earning ksh.100,000 per month with other benefits and lastly earning ksh.126,500.

On 18th April, 2018 the claimant was issued with letter of suspension and a notice to show cause to allegations of soliciting for a bribe from a client of the respondent. On 25th April, 2018 the claimant was invited to a disciplinary hearing and on 26th April, 2018 he was issued with notice terminating employment.

The claim is that termination of employment is illegal, unfair and has led to loss of income, character assassination due to the allegations made against the claimant.

The claimant is seeking the payment of his dues of;

- a) Pay for 7 days while on suspension Ksh.40,750;
- b) Payment for remainder of term until 55 years ksh.2,783,000;
- c) Severance pay Ksh.1,518,000;
- d) Accrued leave days to retirement ksh.3,289,000.

Total Ksh.7,630,250.

Response

The respondents case is that the claim herein should be dismissed with costs on the grounds that on 18th April, 2018 the claimant as issued with notice to show cause following investigations on the grounds of soliciting a bribe from a client which is a criminal offence. The claimant was invited to a hearing and upon which he was found culpable and was dismissed in accordance with the law.

The response is also that the claims made are not justified and should be dismissed with costs.

Both parties agreed and filed written submissions.

The claimant submitted that he was an employee of the respondent and on the allegations made against him he was not given a fair hearing which led to unfair termination of his employment. The allegations had no legal foundation and the disciplinary hearing did not proof these allegations beyond reasonable doubt to justify dismissal form employment as required under section 45 and 43of the Employment Act. The prayers sought should be granted.

The claimant cited several authorities - **Emmanuel Mambo Oduory v One Acre Fund [2020] eKLR; Walter Ogal Anuro v Teachers Service Commissions [2013] eKLR; Standard Group Limited v Jenny Luesby [2018] eKLR.**

The respondent submitted that the claimant was an employee but was dismissed for a crime of soliciting for a bribe from a client Ms Philomena Katunge in a supply for cooking pots and jikos under the company name of Clay World Pottery. There was a complaint lodged against the claimant on the grounds that together with Paul Mabwa and Edwin Sitati they called Ms Katunga on phone and solicited for a bribe in exchange for fast-tracking her payment. The claimant demanded payment of Ksh.10,000 and the client lodged a complaint whereupon the claimant was issued with notice to show cause and then invited to a disciplinary hearing where text messages to the client were presented with the claimant making demands. The claimant offered no reasonable defence and the summary dismissal was justified.

The respondent relied on the cases of Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others [2019] eKLR; Evans Kamadi Misango v Barclays bank limited [2015] eKLR.

Determination

The claimant was summarily dismissed by the respondent vide letter dated 26th April, 2018 on the grounds that on 17th April, 2018 he solicited for a bribe from a client of the respondent.

By notice dated 18th April, 2018 the claimant was suspended and issued with show cause notice to respond to the complaint made against him by the client following allegations of soliciting for a bribe.

In his response to the show cause notice, the claimant asserted that;

On the issue of soliciting for bribe of ksh.10,000 (tea), I did not and there was no any other transaction between me and the supplier apart from processing her payment and sending the driver to pay and collect the pots, I made efforts both for the organisation and the supplier to close the matter only on the grounds of the user departments need for the pots [pots] and supplier following up for the pots to be collected and she gets here payment since it was long overdue, and I believe internally, my manger, Executive Chef can agree with me on this. When got texts a text from her I mostly ignore since it was not an issue I had put up personally. ...

The claimant was invited to a disciplinary hearing on 18th April, 2018 and the records noted that he admitted to asking for a *token of appreciation* from the pot supplier.

The claimant does not contest these disciplinary hearing proceedings nor does he challenge the details with regard to his phone of 0722249106 and messages to the pots supplier demanding for the *tea* and *token of appreciation*.

An employer is allowed to summarily dismiss the employer pursuant to section 44(3) and (4)(g) of the Employment Act, 2007 (the Act) when the employee has fundamentally breached the employment contract and making it impossible to continue the employment relationship and where an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his employer or his employer's property. Such justify summary dismissal.

The only condition is that the employer but abide the provisions of section 41(2) of the Act, which requires the employee be invited to defend himself on the allegations made and upon which a decision must issue.

In this case, there was a complaint against the claimant, he was invited to defend himself and where he failed to address the allegations of soliciting for a bribe from a client, and after the hearing he was dismissed. On the claim and the response, the court finds no matter of illegal, unlawful or unfair summary dismissal. Such was justified in this case.

On the claims made for payment during the 7 days of suspension, the employment terminated on 26th April, 2018 and for the entire period the claimant was in employment and during his suspension, the salary due is payable.

The claimant was earning Ksh.126,500 and for 7 days, the due salary is Ksh.29,517 only.

On the claim for payment until the age of retirement, the court finding that the summary dismissal was justified, employment having terminated on 26th April, 2018 such claim is not justified. The claimant did not offer his labours to the respondent after 26th April, 2016. See **James Oyugi Mangla v Kenya National Union of Teachers & another [2020] eKLR** and **D.K. Njagi Marete v Teachers Service Commission [2013] eKLR** where the court held that;

A grant of anticipatory salaries and allowances for a period of 11 years left to the expected mandatory retirement age of 60 years, would not be a fair and reasonable remedy. The Claimant has moved on after the unfortunate and capricious decision of the TSC. He no longer renders any Labour to the Teachers Service Commission. The Employment Act, 2007 requires he moves on as he has done, and mitigated the loss of his job as the Senior Legal Principal Officer of the TSC. He indeed more than mitigated that loss; ...

Equally in this case, such a claim for payment until retirement is found without justification.

On the claim for severance pay, the facts of the case outlined above, this case did not stand out as one based on redundancy to claim severance pay. Such is not due.

The claim for accrued leave to retirement age must fail based on the findings above with regard to claim for salaries until retirement age.

Accordingly, the claims made are found without justification save for the payment for 7 days during suspension all at Ksh.29,517. Each party shall bear own costs.

Delivered in court at Nairobi this 7th day of October, 2021.

M. MBARU

JUDGE