



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 2517 OF 2016

DAVID MARONA.....CLAIMANT

VERSUS

KENYA AIRPORT AUTHORITY.....RESPONDENT

JUDGEMENT

1. By a plaint filed on 10th July 2009 the claimant alleged that he was employed by the respondent as a security warden on 14th April, 2000 at a gross salary of Kenya pounds 5643 per annum excluding other benefits.
2. By a letter dated 9th July, 2002 and upon the claimant's successful completion of CPA 2 the respondent promoted the claimant to the post of Accounts Officer Grade 9 with effect from 1st July, 2002 at a gross salary of Kshs 44,712 per month.
3. According to the claimant his employment was subject to the terms of employment contained in the letter of employment and rules of conduct and discipline laid down by the respondent.
4. On or about 15th December, 2006 the respondent in flagrant breach of the agreement of employment and related rules dismissed the plaintiff. He considered the dismissal unlawful. The claimant stated that the dismissal was in respect of alleged loss of money belonging to the respondent. Upon dismissal the respondent retained USD 3,000 having deducted the same from the claimant's dues without any justifiable reason.
5. The claimant further pleaded that upon the allegations of loss of money, the claimant was charged with the offence of theft by servant which charges were later withdrawn on 17th March, 2008.
6. The respondent on its part pleaded that the claimant was bound to adhere to the terms and conditions and regulations prescribed by the employer. The respondent further pleaded that contract with the claimant was a service contract based on performance and availability of position for promotion and there was no guarantee that the claimant would reach the ranks alleged.
7. The respondent further averred that during the tenure of employment the claimant was guilty of breaches of rules and regulations prescribed by the respondent. According to the respondent, the claimant received revenue on behalf of the respondent for aircraft landing fees and security passes but failed to bank the same. Further the claimant tampered with records to conceal his actions. The respondent further denied illegally retaining USD 3,000 and avers that the same was retained on the express authority of the claimant.
8. Regarding the arrest of the claimant, the respondent stated that pursuant to recommendations by its auditors a complaint was made to the police and that the decision to arrest and charge the plaintiff was made by the police based on the outcome of its investigations and not on the order of the respondent.
9. At the hearing the claimant stated that he was initially employed as a security warden in 2000. He studied accounts while working and was later appointed as an accountant in 2002. As a warden he was earning Kshs 25,500/= per month and as an accountant Kshs 70,000/= per month. He was posted to Lokichogio airport in 2002 and was in charge of collection of revenue preparation of budget and banking.
10. It was his evidence that he was summarily dismissed on the accusation of stealing unbanked US dollars equivalent to Kenya shillings three million. According to him the allegations were false. He stated that every money collected at the airport was banked. All airports were banking USD to a pool account at National Bank. It was his evidence that they used to collect US Dollars for a while then bank the same and later forward the banking slip to head office for reconciliation.

11. It was his evidence that the head office never used to send to them reconciliation statements to show what had been banked. They asked for the statement but were never given so at the station level they did not know what was banked and captured. According to him banks could fail to capture cheques banked. Once he banked a cheque of USD 1700 but the same was not captured.
12. It was his evidence that the respondent complained that what was collected as landing fees was not banked for a period of four years. The audits were annual and no issue was raised over missing money and when he handed over to move to Wilson there was no complaint. The complaint over lost money came in September, 2006 when he was already at Wilson.
13. He was called by the Head of Human Resource at the Headquarters to explain. He was shown the audit report and after 30 minutes he was given a suspension letter. It was his evidence that he was never given an opportunity to go to Lokichogio to retrieve the documents. They used to keep the documents in a container and that the container was a bit disorganized and it would take a while to retrieve the documents.
14. The claimant stated that he was informed of the allegations by his supervisor and that his supervisor was to be involved in the investigations and further that he was to be furnished with details and documents on the allegations and thereafter appear before a disciplinary committee. It was his evidence that no disciplinary committee was constituted. The human resource manual provided that one should be dismissed after the conclusion of the criminal case.
15. In cross-examination the claimant stated that there was no loss of revenue and that he was condemned unheard. He received the suspension letter and responded to the allegations in the suspension letter. He later on received his dismissal letter on 15th December, 2006. He appealed against the dismissal. Upon dismissal he was not paid his terminal benefits. He was only paid his withheld salary and also received a refund of his pension contribution.
16. The respondent's witness Mr Calvin Opondo informed the court that he was an internal auditor for the respondent. He audited the claimant's at Lokichogio Airport. The audit was for the period 2003 to 2006. I realized some USD 43,280 were not banked. There was also money received from customers in form of security passes which was not banked. He reported the issue to the Manager Internal Audit who reported the same to the MD. He was advised to report the issue to the Airport Police for further investigations.
17. The General Manager HR called him to a meeting where the claimant was invited and he was asked to show the claimant the audit report for him to respond. The claimant denied the allegations. Three days later the claimant was issued with a showcause letter. According to him the claimant never responded to the allegations in the report. It was further his evidence that every employee was bound by the respondent's HR Manual and policies. According to him the claimant was given an opportunity to defend himself but did not do so.
18. In cross-examination he stated that audits are done after risk assessment and are done regularly. They were conducted annually. It was however possible that a year could pass without auditing a particular area. Lokichogio was a remote area so audits were not done annually. He conducted the investigations with the claimant and denied clearing him of any wrongdoing. He asked that the claimant be transferred because he was interfering with his work.
19. The money that was not banked was missing from the bank statements not other documents. He found the receipts but the money was not banked. There was no money unaccounted for by the bank. The claimant also told him he was carrying USD 3000 from Lokichogio but it got lost. There was no system for carrying money then. The claimant pleaded with his Bank Manager and said he would resolve the issue. The lost money was recovered from the claimant's salary.
20. The claimant herein was summarily dismissed on 15th December, 2006. The applicable law then was the repealed Employment Act Cap 226. The current Employment Act came into operation on 2nd June, 2008. Under the repealed Act, there was no obligation to give reason for termination of employment. This could however be done and was always done as an industry practice and where provided in the employment contract and or human resource policy and procedures manual.
21. The respondent's human resource policy manual attached as one of the claimant's document provided for elaborate procedure including warning, interdiction and dismissal. The claimant alleges he was not subjected to disciplinary process as provided in the manual whereas this may be so the amount of compensation payable if at all was an equivalent of the notice period the claimant would have been entitled if his contract was to be terminated normally without more. Prior to the current Act there was no provision for compensation for unfair termination of up to 12 months' salary as is the present case.
22. The claimant was confronted by the Auditor Mr Calvin Opondo concerning some revenue which was received and receipted but was missing from the bank statement hence according to him not banked. The claimant was issued with a show cause letter to explain which he did. He was subsequently dismissed when the respondent felt his explanation was not satisfactory.
23. The respondent further reported the issue to the police who after conducting further investigations decided to arrest and charge the claimant with the offence of stealing. Further the claimant claimed he lost USD 3000 which he was travelling with from Lokichogio to Nairobi for banking. He did not elaborate under what circumstances the money got lost nor did he allege reporting the incident to any police station. The claimant instead offered to pay the money allegedly lost.
24. From the foregoing even if the current Employment Act was applicable the court is of the view that there existed valid reasons for summary dismissal of the claimant.
25. Regarding malicious prosecution the claimant never demonstrated that there existed no reasonable cause for the respondent to involve the police in this matter. The respondent lost a significant amount of money both in form of revenue received and not banked and actual cash lost by the claimant while in his custody. This was a reasonable ground for a report to the authorities to investigate further and the decision to prosecute lay with them. The claimant did not demonstrate that the respondents prevailed upon the police to prosecute in order to sustain a

claim for malicious prosecution.

26. In conclusion the court finds the claim without merit and the same is hereby dismissed with costs. The claimant will however be entitled to be paid his terminal dues as stated in the letter of dismissal dated 15th December, 2006 if not paid already.

27. It is so ordered.

Dated at Nairobi this 14th day of May, 2020

Abuodha Jorum Nelson

Judge

Delivered this 14th day of May, 2020

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge