



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1654 OF 2014

CHARLES MULI KIILU.....CLAIMANT

VERSUS

THE INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

THE ATTORNEY GENERAL2ND RESPONDENT

JUDGEMENT

1. The claimant pleaded that he was recruited into the police service on 1st December, 1978 and served until 30th October, 2007 when he alleged the respondent unlawfully dismissed him from employment. According to the claimant he was a permanent and pensionable employee hence was entitled to work up to the then retirement age of 55 years. The plaintiff/claimant averred that he was dismissed from service for unjustifiable reasons and without being accorded a proper forum to defend himself.

2. The respondent on the other hand pleaded that the claimant was dismissed after a lawfully constituted inquiry was conducted into his discipline and conduct and was found guilty of an act, conduct, disorder or neglect to the prejudice of good order and discipline. Further the claimant was dismissed after he was accorded a fair hearing at the proceedings that were conducted in accordance with police regulations which found the claimant guilty of misconduct. The respondent further averred that the claim offended section 3 of the Public authorities Limitation Act and further that the claimant did not exhaust the avenues provided particularly application for review and thus the suit was premature.

3. At the oral hearing the claimant repeated the averments in the statement of claim and further stated that on 17th October, 2007 he was put on trial by the OCPD Nyahururu on allegations of abuse of office. He was accused of hiring out police officers without following the prescribed procedure. He stated that there was a format for hiring police officers and that hiring was on the basis of directives. There was no written procedure. He further stated that hiring of officers was within his discretion.

4. He could assign them to guard institutions such as schools, Saccos, banks etc. At the material time, there were police officers guarding KCB Bank and when he asked the OCPD he was told KCB was a government institution. According to him no statute which he violated was cited to him. It was further his evidence that the institutions guarded could provide lunch for the officers and at times token payments. The claimant stated that he sent daily roster of officers to the OCPD which showed where the officers were assigned duty. He was dismissed on 30th October, 2007 and that the dismissal was without benefits.

5. In cross-examination he stated that he was not served with a notice prior to the proceedings. He was just called to the Divisional Headquarters and told there were proceedings. They started in the morning and ran throughout the day. They lasted two days. 6 witnesses were called and he also gave his side of the case. He did not call any witnesses. He further stated that he appealed against the dismissal to the Commissioner of Police. He also appealed to the Public Service Commission.

6. It was his evidence that there was no procedure for deployment of officers and that the OCPD knew about the deployment. Some Kshs 15,000/= per month was paid to the OCS account for the upkeep of the station. It was his evidence that the guidelines for hiring officers came in September after he had hired out the officers.

7. The respondent's witness Mr Robinson Mboloi stated that he was the Deputy OCPD Nyandarua at the material time. On 17th October, 2007 he was called by the OCPD Mr Owany to commence Orderly Room Proceedings against the claimant. This was after a complaint had been lodged at the Headquarters that the claimant had engaged in private hire of police officers without following laid down procedures. Mr Owany gave waiver notice so that proceedings could commence immediately. After the proceedings he concluded that the claimant was guilty as charged and passed his findings to higher authorities for sentencing. According to him he informed the claimant of the charges and his entitlement to call witnesses. The claimant never called any witness.

8. In cross-examination he stated that the proceeding commenced from 5:15 p.m. on 17th October, 2007. He informed the claimant of the

charges. It was his evidence that the gravity of the offence would determine who passes the sentence. In his view the claimant had committed a serious offence.

9. The reason for which a termination of contract or dismissal can occur in most cases is unique to the organization or concern for which an employee works. The test however usually is whether a reasonable employer in the same industry or concern would for the same reasons consider dismissal or termination of contract as the most appropriate in the circumstances. This is the general principle under the current Employment Act regime. The consideration as to the reasonableness of the reasons for dismissal or termination was not a statutory requirement under the repealed Employment Act.

10. The right to be heard before dismissal or termination of contract as well as being furnished with reasons was either provided for in the contract and or human resource policy manual or left to the discretion of the employer.

11. The claimant's service was terminated on 30th October, 2007 prior to the coming into force of the present Employment Act. The applicable statute was therefore the repealed Employment Act. The claimant was dismissed from service for the reason that he hired out police officers without following the laid down procedure. The respondent however never laid before court the procedure required which the claimant failed to follow. According to the claimant, there was no laid down procedure for hiring out police officers.

12. As the OCS, the matter was at his discretion and further that the OCPD Nyandarua was aware of hiring since the claimant used to forward the daily roster of officers and their assignments to the OCPD. According to the claimant, the only reason he was subjected to orderly room proceedings and eventually dismissed was out of jealousy over the money Olkalou Teachers Sacco was giving to the station for the welfare of the station and the officers there. These allegations by the claimant were serious enough to oblige the respondent to table before court the evidence of the procedure followed in hiring out officers which the claimant was accused of flouting and in what manner and extent he flouted them.

13. In the absence of such evidence, the court considers the termination/dismissal from service of the claimant unwarranted and harsh. Under the previous legal regime, whenever the court came to the conclusion that the termination was unfair or dismissal was wrongful, the quantum of compensation payable was equivalent to the necessary notice of termination.

14. The court having reached the conclusion that the termination of the claimant's service was wrongful and unwarranted, the court hereby declares that the claimant be compensated as follows:

- a. One month's salary in lieu of notice
- b. Pension, gratuity and all terminal benefits payable at the time of dismissal as if the claimant left service normally.
- c. Costs of the suit.
- d. The authorized officer to compute and pay the claimant's dues as above.
- e. Any party be at liberty to apply for final orders.

15. It is so ordered.

Dated at Nairobi this 6th day of May, 2020

Abuodha Jorum Nelson

Judge

Delivered this 6th day of May, 2020

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

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