



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**EMPLOYMENT AND LABOUR RELATION COURT A**

**T ELDORET**

**CAUSE NO 158 OF 2017**

**LYNUS KIPLIMO TOO.....CLAIMANT**

**VERSUS**

**THE MOI TEACHING AND REFERRAL HOSPITAL....RESPONDENT**

**J U D G E M E N T**

1. By a memorandum of claim dated 30<sup>th</sup> December, 2016 the Claimant pleaded that he was employed by the respondent as an Accounts Assistant through a letter of appointment dated 2<sup>nd</sup> April, 2015 at a monthly salary of Kshs. 40,087.
2. He worked until 15<sup>th</sup> July, 2016 when the respondent summoned him to Show Cause and later summarily dismissed him on 22<sup>nd</sup> August, 2016.
3. According to the Claimant the dismissal was irregular, unfair and improper in that the suspension did not accord with the requirements of the Employment Act termination was not in accord with his terms of service and contract of employment. The Claimant further complained that he was not accorded a fair hearing.
4. The Claimant therefore sought among others a declaration that the termination was unlawful and unfair and that he be reinstated to employment in the alternative he sought payment of his terminal dues as well as compensation for unfair termination of employment.
5. The respondent in their amended defence filed on 20<sup>th</sup> November, 2018 pleaded that the Claimant was employed as Accounts Assistant on a one-year contract from 4<sup>th</sup> May, 2015. The respondent denied the Claimant dutifully and diligently served the respondent and averred that the Claimant participated in corrupt activities that were detrimental to the respondent.
6. The respondent denied the dismissal was irregular and unfair and averred that the Claimant admitted due process was followed up to the determination of the Claimant's appeal by the respondent's Board of Management.
7. According to the respondent the Claimant admitted to soliciting for bribes from members of the public to the detriment of the respondent. Further that the suspension of the Claimant without pay was necessary to protect the respondent's legitimate business interest.
8. The respondent pleaded further that its terms and conditions of service provided for internal disciplinary procedures and punishments which could be administered including summary dismissal which procedures were adhered to handling the Claimant's case.
9. The Claimant's appealed to the respondent's Board Chairman on 2<sup>nd</sup> September, 2016 and upon deliberation no new grounds were found to warrant change of the earlier decision to terminate the Claimant's service. The decision on the appeal was communicated via a letter dated 17<sup>th</sup> October, 2016.
10. Concerning reinstatement, the respondent pleaded that the Claimant could not be reinstated into permanent and pensionable terms since his involvement in unethical and corrupt activities led to loss of trust in him and further that he was on a fixed term contract.
11. At the oral hearing the Claimant stated that he was employed on 4<sup>th</sup> May, 2015 and worked for one year and three months until 23<sup>rd</sup>

August, 2016. He adopted his two statements as evidence in chief and further stated that he was informed by the respondent through a letter dated 18<sup>th</sup> July, 2016 that he was involved in bribery and abuse of office. It was a show cause letter and he responded to it and worked until 16<sup>th</sup> August, 2016 when he was called to the Registry to pick a letter. It was a letter inviting him to a disciplinary hearing on 17<sup>th</sup> August, 2018. He appeared as invited at 9.00 am. The letter however, did not tell him why he was to appear before the committee. He appeared before the Committee alone and never had a witness. He further stated that the complainant was not there. He continued working thereafter until 23<sup>rd</sup> August, 2016 when he was again called to the Registry where he was issued with a letter of termination. The letter advised him to appeal to B.O.M of not satisfied. He appealed but was not called for the hearing if the appeal. He denied involvement in any corrupt practices.

12. According to him Barnabas sent him with money to give one Emmanuel. It was his evidence that he knew Emmanuel through Barnabas and that Barnabas never lodged any complaint against him. It was Philip Murei who complained against him and that he never personally knew Murei.

13. In cross-examination he stated that he was asked at the disciplinary hearing to respond to allegations of abuse of office, involvement in corruption and criminal offences. He denied that he acted as a conduit for Emmanuel. He further stated that Emmanuel confirmed the money was Kshs. 200,000/=. He denied giving Emmanuel Kshs. 400,000/=. The Claimant further stated that he lodged a complaint against Emmanuel with the police and further that he never knew what the money to Emmanuel was for. He admitted recording the statement attached as AC1 in the respondent's bundle of documents where he asked that the matter be reduced from a criminal offence to a civil claim.

14. Concerning the hearing he stated that he did not know who called the shop stewards since he was not a member of the Union. He was never given a chance to object to the presence of the shop stewards.

15. In re-examination he stated that the complainant was not there at the disciplinary hearing since he had withdrawn the complaint against him.

16. The respondents' witness Mr. Felix Kosgey informed the Court that he was respondent's Senior Human Resource Officer. It was his evidence that the Claimant was a fixed term contract employee and that a complaint came that the Claimant received money from one Mzee Barnabas under the pretext of procuring a job for his daughter. The complaint was lodged by one Mr. Murei Barnabas brother. The amount received was Kshs. 400,000/=. The Claimant refunded Kshs. 95,000/= and said he would sell some property to settle the full amount.

17. The security Office recommended that the matter be handled by respondent's management. The Claimant was consequently issued with a show cause letter. He responded to the same and was thereafter invited to a disciplinary hearing. It was his evidence that the Claimant admitted receiving the money and apologized. The Claimant reported the issue to the police because there was pressure to return the money. An agreement was therefore drawn between the Claimant and Emmanuel on how to refund the Kshs. 400,000/=

18. Concerning the disciplinary hearing the Claimant appeared before the disciplinary committee and the minutes of the meeting were generated. It was further his evidence that the respondent had lost trust in the Claimant hence a recommendation was made to terminate his service. The Claimant upon termination was informed of his right of appeal. He appealed and apologized over the incident. The Board upheld the termination.

19. In cross-examination he stated that the Claimant was employed on 4<sup>th</sup> April, 2015 and that there was no guarantee that the contract would convert from fixed term to permanent and pensionable. The Claimant had however, to deal with allegations against him first.

20. Mr. Kosgey further stated that Barnabas Bar was an old man and his brother Murei came to complain on his behalf. He stated that they never recorded any statement from Barnabas and Nancy Chepchumba. It was further his evidence that the Show Cause letter was issued at the conclusion of the investigations and that the letter contained allegations against the Claimant.

21. In a claim for termination of employment the onus is cast upon the employer to justify and or prove reasons for termination of employment and failure to do so would lead to finding that a termination was unfair.

22. Further the reasons for which an employer terminates the employment of an employee are reasons which the employer genuinely believed to exist and which caused the employer to terminate the service of an employee.

23. On the other hand, the burden of proof that an unfair termination has occurred is on the employee. The test is usually that of a reasonable employer. If a reasonable employer confronted with similar facts would consider termination as the most appropriate disciplinary measure to take in the circumstances the Court will uphold the termination. It is not for the Court to over analyse the reason or reasons for termination and substitute its own opinion with that of the employer.

24. The Claimant herein was accused of involvement in corrupt activities in his place of work. That is to say he obtained money from one Barnabas Bor on the pretext that he was in a position to secure for Barnabas daughter, one Nancy Chepchumba, a job. The matter was investigated and Claimant issued with a Show Cause letter to which he responded and later on invited for a disciplinary hearing at the conclusion of which a decision was made to terminate the Claimant's employment.

25. The Claimant in his response to the Show Cause did not deny the allegations against him. He instead appeared apologetic over the incident and seemed to suggest he merely received the money for onward transmission to one Emmanuel.

26. Whatever the case, the respondent is public facility and any person qualified ought to obtain employment without paying any money to obtain such employment. To this extent the respondent cannot be said not have had a valid or justifiable reason to terminate the Claimant's employment. Involvement in corruption is not only a criminal offence but unethical.

27. Concerning the procedure followed in terminating the Claimant's service, he was issued with a Show Cause letter stating the allegations against him (letter dated 18<sup>th</sup> July, 2016). He responded to the same essentially admitting the allegations but shifting the blame to one Emmanuel. The Claimant was thereafter on 15<sup>th</sup> August, 2016 invited for disciplinary hearing before the Hospital Staff Disciplinary Committee which he attended and defended himself and a decision was thereafter taken to terminate his service and the same communicated to him through a termination letter dated 22<sup>nd</sup> August, 2016. The termination letter advised him that should he be dissatisfied with the decision he was free to appeal to the Board Chair through the Director within fourteen days which he did on 2<sup>nd</sup> September, 2016 but on 17<sup>th</sup> October, 2016 he was notified that his appeal was unsuccessful since no new grounds were raised to warrant change in decision to terminate his service.

28. From the foregoing the Court is satisfied that due process in line with the Employment Act was followed in terminating the Claimant's service and the Court has no reason to fault the same.

29. In conclusion the claim is found unmerited and the same is hereby dismissed with costs.

30. It is so ordered.

Dated at Eldoret this 30<sup>th</sup> day of October 2020

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 30th day of October 2020**

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent