



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 137 OF 2017

(Before Hon. Justice Mathews N. Nduma)

ALPHONSE ODHIAMBO ORWA.....CLAIMANT

VERSUS

WORLD VISION KENYA.....RESPONDENT

JUDGMENT

1. The claimant filed suit on 4th April 2017 seeking general damages for unlawful dismissal and payment of terminal benefits set out under paragraph 4 of the statement of claim.
2. The claimant testified as CW1 and adopted a witness statement dated 20th February 2019 and filed on 7th March 2019 as his evidence in chief.
3. CW1 testified that he was employed by the respondent as a driver stationed at Mugunga ADP, Homa-Bay County earning Kshs. 54,705 a month. CW1 testified that he had served the respondent for over 20 years and had received awards in recognition of his service.
4. On 28th July 2015, CW1 was interdicted from work on allegations of immoral behavior. It was alleged that CW1 had hosted a student who had run away from home after realizing that she was pregnant. A report was made to the family support community initiative under the respondents by the father of the child accusing CW1 accordingly.
5. CW1 testified that he was arrested by police and detained at Mugunga police station on allegations of having sex with a minor. CW1 testified that he was exonerated by the police after investigations and was released. CW1 stated that he was however summarily dismissed from employment by a letter dated 28th July 2015.
6. CW1 prays to be awarded as prayed.
7. RW1 testified for the respondent and adopted a witness statement dated 8th October 2019 as his evidence in chief. RW1 testified that he was a Regional Manager of the respondent based at Kisumu and that he had full knowledge of the facts of this case. RW1 stated that the respondent is a Donor Funded Christian Relief Development and Advocacy Organization dedicated to working with children, families and communities to overcome poverty and injustice.
8. That the claimant was an employee of the respondent as a driver based at Mugunga ADP Camp in Homa-Bay County.
9. That the claimant was arrested by police on 8th June 2015 on allegations of defiling a school girl aged 16 years. That the respondent made an inquiry on the case and received a response from the OCS Mugunga ADP camp vide a letter dated 17th June 2015.
10. The OCS wrote a further letter to the respondent dated 13th July 2015, expressing frustration experienced in the investigations of the case. The respondent served a show cause notice on the claimant and the claimant responded to the same on 24th July 2015.
11. A disciplinary board sat and considered the complaint and the response from the claimant and unanimously decided to terminate the employment of the claimant.
12. The claimant was served a letter of termination dated 28th July 2015. RW1 testified that the respondent had a good reason to terminate the employment of the claimant especially because the claimant was well aware of the child policy and the Human Resource Manual of the Organization which dictated the acceptable behavior of staff within and outside the work environment and the rights of an employee

respectfully.

13. That the respondent followed a fair procedure in terminating the employment of the claimant and that the claim by the claimant lacks merit and it be dismissed.

Determination

14. Section 43(1) and (2) of the Employment Act 2007, provides that an employer shall prove that it had a valid reason to terminate employment of an employee. Section 45 also provides that no employer shall terminate employment of an employee for no valid reason and without following a fair procedure.

15. Under *Section 41 of the Act*, an employer is obliged to notify an employee of alleged misconduct and provide opportunity to the employee to explain himself.

16. In the present case, RW1 has demonstrated that the claimant was reported to have defiled a school girl well knowing the policy of the respondent as a Christian Welfare Organization whose primary objective was to take care and protect vulnerable children and families. RW1 demonstrated that the claimant was given opportunity to explain his case and his explanation was considered to be insufficient hence the decision to terminate his employment.

17. The claimant has the onus under *Section 47(5) of the Employment Act, 2007* to show on a balance of probabilities that the termination of his employment was wrongful. The claimant has failed to discharge that onus.

18. To the contrary, the respondent has adduced evidence sufficient to rebut the claim by the claimant and the court finds that the termination of employment of the claimant was justified, lawful and fair.

19. Accordingly, the suit by the claimant lacks merit and is dismissed with costs.

Judgment Dated, Signed and delivered at Nairobi this 15th day of October, 2020

Mathews N. Nduma

Judge

ORDER

In view of the declaration of measures restricting court of operations due 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. Obach for the Claimant.

M/S Mwangi for Respondent

Chrispo- Court clerk