



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 2069 OF 2015

ANASTACIA MUTINDI KIBUTU.....CLAIMANT

VERSUS

LIAISON GROUP (IB) LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. The claimant brought this suit on 20.11.2015 contending that his employment contract was unfairly terminated on account of redundancy by the respondent on 13.4.2015 and prayed for the following reliefs:-

- (a) A declaration that the reasons stated in the letter of termination do not constitute valid grounds for declaring the Claimant redundant.
- (b) Termination be declared wrongful/unlawful and unfair.
- (c) The Respondent to pay to the Claimant compensation the equivalent of 12 months' salary for wrongful and unfair termination at Kshs.2,288,568 and outstanding 3 days unpaid salary and pension Kshs.29.152.67
- (d) The claimant be paid damages for pain suffered for the loss of employment.
- (e) Interest on the monetary orders from the date of termination filing of the Claim.
- (f) Costs of the Claim; and any other order the Court may find it fit to award.

2. The respondent filed her defence on 16.2.2016 admitting that she terminated the claimant's services on redundancy but denied that the redundancy was unfair and unlawful. She therefore prayed for the suit to be dismissed with costs.

3. The suit was heard on 17.9.2018 when the claimant testified as Cw1 and called Mr Justin Mwaria Nthiga as Cw2 but the respondent called no witness to support her defence. However after the hearing both parties filed written submissions which I have carefully considered herein alongside the evidence tendered.

Claimant's Case

4. Cw1 testified that she was employed by the respondent as the Manager Corporate Services on 3.10.2012 and her salary was Kshs.190,714 per month. That she worked well until 13.4.2015 when she was terminated on account of redundancy. That the procedure followed to terminate her was not fair because no prior notice was served upon her and the labour officer was required by section 40 of the Employment Act. That after her termination another person took over her role with a higher pay of Kshs.204,217 per month.

5. Cw1, further contended that after the termination she was paid nothing since it was all credited to her SACCO loan even before it was due and after she had made arrangement on how to repay the same.

6. Cw2 was the respondent's Manager consulting until 13.4.2015 when he was terminated on account of redundancy together with the claimant.

He testified that the termination of the claimant's services was done unlawfully and without following a fair procedure. He however admitted that he never attended any meeting in which the redundancy of the claimant was discussed.

Analysis and Determination

7. There is no dispute that the respondent employed the claimant as the Manager Corporate Services from 3.10.2012 to 13.4.2015 when she was terminated on account of redundancy. The issues for determination are:-

- (a) Whether the redundancy was procedurally unfair and unlawful,
- (b) Whether the claimant is entitled to the reliefs sought.

Unfair Redundancy

8. The procedure for terminating employees on account of redundancy in Kenya is set out when section 40 of the Employment Act. The procedure is mandatory and it includes

- (a) Service of at least one month redundancy on the employee (or union if a member of a Trade union), and the area Labour officer,
- (b) Fair selection process taking into consideration seniority in time and skill, ability and reliability of each employee of a particular class of employee affected by the redundancy;
- (c) No victimization of employees due to union affiliation while paying terminal dues;
- (d) Pay cash for all the accrued leave days.
- (e) Pay at least one month salary in lieu of notice
- (f) Pay the employees declared redundant severance pay at the rate of at least 15 days pay for each year of service.

9. In this case, the respondent never adduced any evidence to counter the claimant's evidence that she was terminated without following the strict procedure set out by section 40 of the said Act, there is no evidence to prove that the respondent served at least one month notice on the claimant and the area Labour Office before the termination.

10. In addition, the respondent failed to pay the claimant salary in lieu of notice as required by section 40(1)(g) of the Act. The same was only paid on 4.6.2015 after service of a demand letter on 24.4.2015. On account by the foregoing contraventions of the mandatory redundancy procedure. I return that the claimant was declared redundant through an unfair procedure.

Reliefs

11. In view of the foregoing, I make declaration that the termination of the claimant's employment herein was unfair and unlawful. Flowing from the foregoing declaration, I award the claimant 12 months salary compensation for unfair termination. In awarding the maximum award, I have considered the fact that the claimant did not contribute to the termination through misconduct and the fact that the termination was abrupt. I have also considered that the claimant could not reasonable secure an alternative job within a short time considering her seniority in the respondent company.

12. The claim for unpaid salary unpaid person lack particulars and were not substantiated by evidence and as such, they stand dismissed.

Conclusion and Disposition

13. I have found that the procedure followed before terminating the claimant's services on account of redundancy contravened the express and mandatory procedure set out by section 40(1) (b) and (g) of the Employment Act. I have further found that the said violation rendered the termination unfair within the meaning of section 45 of the Act and brought the respondent's action to the provisions of section 49 of the Act. Consequently, I enter judgment for the claimant in the sum of Kshs.288,568 less statutory declarations. The claimant will also have costs and interest at the court rates from the date hereof.

Dated, Signed and Delivered in Open Court at Nairobi this 31st day of January 2019

ONESMUS N. MAKAU

JUDGE