



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 299 OF 2016

(Before Hon. Justice Mathews N. Nduma)

CHARLES OWINO AWINO.....CLAIMANT

VERSUS

MUMIAS SUGAR COMPANY LIMITED.....RESPONDENT

J U D G M E N T

1. The Claimant prays for payment of terminal benefits set out under paragraphs 5 and 30 of the Memorandum of Claim to wit:-

- (i) Kshs.916,000 being two months' salary in lieu of notice.
- (ii) Unpaid salary for 1st April, 2016 to 21st April, 2016 in the sum of Kshs.320,600.
- (iii) Salary for 49 days in lieu of leave days not taken Kshs.779,545.
- (iv) Unpaid car and gas allowance from March to June 2015 in the sum of Kshs.338,400 and
- (v) Compensation for wrongful dismissal equivalent to 12 months' salary.

2. The Respondent filed a statement of defence on 16th February, 2017 in which Respondent states that it employed the Claimant on 12th September, 2011 as capability Development Manager earning Kshs.150,000 a month.

3. On 1st August, 2012 the Claimant was confirmed to the position. On 15th February, 2013 the Claimant was promoted to Capability Development Manager at a basic salary of Kshs.215,06.56 per month and a car allowance of Kshs.104,000 per month from 1st February, 2013 making a gross salary of Kshs.319,000.

4. On 2nd October, 2014 Claimant was appointed as Director of Human Resources with effect from 27th June, 2014 at a salary of Kshs.235,000 which was on 17th July, 2015 increased to Kshs.350,000 from 1st June, 2015.

5. On 14th April, 2016 Claimant was issued a show cause letter and was suspended from employment on alleged dereliction of duty. The Claimant responded to the show cause letter on 15th April, 2016 and was invited to attend a disciplinary hearing on 20th April, 2016 and he attended to explain himself on the allegation.

6. The Claimant was summarily dismissed for unlawful dereliction of duty by a letter dated 21st April. 2016. The Claimant filed an appeal on 6th June, 2016. The Chief Executive Officer of the Respondent dismissed the Appeal on 16th June, 2016. Respondent admits contents of paragraph 3, 4, 5, 6 & 7 of the statement of claim save that the claimant earned a gross salary of Kshs.454,000. The Respondent denies the particulars of claim under paragraphs 25 and 30 of the Memorandum of Claim and puts the Claimant to strict proof thereof. Both parties filed lists of documents which they relied upon including witness statements by the Claimant and Moses Owino, Chief Human Resource Officer of the Respondent. Mr. Owino in his witness statement did not explain why the claim for arrear salary in the sum of Kshs.320,600, in lieu of leave, Kshs.779,545 and unpaid car and gas allowance for March to June 2015 was not payable. Mr. Owino however explained that the Claimant was summarily dismissed and so he was not entitled to payment in lieu of notice in the sum of Kshs.916.000 and for compensation since the dismissal was lawful and fair. The Respondent prays that the suit be dismissed with costs.

Determination

7. On 6th July 2018, Advocates Nyasimi for the Claimant and Okweh Achiando for the Respondent filed a consent order which was confirmed by the court dated 15th May, 2018 in which the parties dispensed with oral evidence and agreed that the matter be adjudicated on the basis of the list and bundle of documents filed by the parties and that the witness statements by the Claimant and that by Charles Owino Awino dated 4th October, 2016 be admitted by consent as the available evidence in this matter.

8. The court has considered the pleadings, bundle of documents including the witness statements and has arrived at the following conclusion of facts –

(i) The Claimant has proved on a balance of probabilities that he is entitled to payment of

(a) Kshs.320,600 being arrear salary for the period 1st to 21st April, 2016.

(b) Kshs.779,545 in lieu of 49 days untaken leave.

(c) Kshs.338,400 being unpaid car and gas allowance for the period March to June, 2015.

(d) Grant of certificate of service.

Total amount 1,438,545.

(e) The claim for a declaration that the summary dismissal was unlawful and unfair is dismissed. The Claimant is not entitled to compensation and payment in lieu of two months' notice.

9. In the final analysis, judgment is entered in favour of the Claimant as against the Respondent as follows:-

(a) Kshs.320,600 arrear salary from 1st to 21st April, 2016.

(b) Kshs.779,545 in lieu of 49 days leave.

(c) Kshs.338,400 being unpaid car and gas allowance for the period March to June 2015.

Total award Kshs.1,438,545.

(d) Interest at court rates till payment in full.

(e) Costs of the suit.

Judgment Dated, Signed and delivered this 24TH day of January, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Nyasimi for Claimant

Mr. Okweh Achiando for Respondent

Chrispo – Court Clerk