



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA

ELRC NO. 30 OF 2017

PATRICK MURAMBI.....CLAIMANT

VERSUS

NZOIA SUGAR COMPANY LTD.....RESPONDENT

J U D G M E N T

The suit was filed on 13.5.2017. The Claimant seeks compensation for unlawful termination and payment of two months salary in lieu of notice. The Claimant further seeks certificate of service, costs and interest.

The matter was initially heard ex parte but application to set aside judgment was entered. Matter started afresh.

The Claimant testified under oath as CW1. He told the court that he was employed by the Respondent on 1.1.1995 as a Management Trainee. He rose to the position of Assistant Personnel Officer then to Personnel Officer. In 2009 he was promoted to Human Resource Manager. He was paid Kshs 295,000 salary per month.

In January 2014, the Claimant was suspended on allegation of employing ghost workers. He was given notice to show cause. CW1 responded to it and denied the allegations. In September 2014, he received a second show cause letter on allegations that he had employed his wife, transferred her and promoted her.

CW1 testified that his wife applied for a job, appeared before an interview panel in which CW1 was not a member and she was recruited based on her qualifications. In fact CW1 had recused himself from the panel when CW1's wife was interviewed.

CW1 appeared before a disciplinary committee and the issue of employing ghost workers was not raised at all.

CW1 was questioned on the issue of having employed his wife and was ambushed with a new allegation not in the notice to show cause that he did not advise the employer on employees who were on suspension.

The issue was for a new staff code and was being implemented gradually.

That the issue had caused a strike. CW1 denied the two allegations. The Claimant received a Letter of Termination dated 24.3.2015. The reasons given for the termination was failure to advise the employer on the issue of termination and having employed his wife.

The Claimant had not obtained another job. He was now 52 years old. He was not given certificate of service and was unable to get a new job. He testified that he had suffered loss and damage due to the unlawful dismissal. He was now farming.

Under cross examination the Claimant stated that he was ambushed on the issue of failure to advise employer on suspension policy and that he had not employed his wife. CW1 said issue of ghost workers was abandoned in the disciplinary hearing.

Claimant insisted that his termination was unlawful and unfair. Claimant said he was paid terminal benefits upon termination.

The Respondent called RW1 Shadrack Nyongesa the acting Human Resource Manager. RW1 relied on his written statement dated 1.5.2018 as his testimony in chief. RW1 confirmed the testimony by the Claimant regarding the two show cause letters sent to him and the suspension.

RW1 said that the Claimant was then invited to attend disciplinary hearing. RW1 did not participate in that process but relied on the records. RW1 denied that the Claimant was ambushed at the hearing with new matters.

RW1 prayed that the suit be dismissed. RW1 under Cross examination said that he was aware that the matters raised in the 1st show cause Letter on employing ghost casuals was resolved by Delloitte and Touche Company. He also confirmed that this issue was relied upon in terminating employment of the Claimant.

RW1 stated that the code of conduct of the company provided for conflict of interest but did not speak about employment of a spouse.

RW1 confirmed that the Claimant did not sit in the committee that employed his wife. RW1 did not sit in that committee either. RW1 did not know if the committee knew that the candidate was the Claimant's wife. RW1 confirmed that the issue of failure to advise on suspension policy was not raised in the notice to show cause. The Claimant remained under suspension even after the issues in the 1st show cause letter were resolved.

RW1 prays that the suit be dismissed with costs.

Determination:

Issues for determination are

- (i) Whether the Claimant's employment was terminated for a valid reason and followed a fair procedure.
- (ii) Whether the Claimant is entitled to the reliefs sought.

Issue I

The reasons given for the termination of employment of the Claimant were two, being that he employed, transferred and promoted his wife and that he had failed to advise the Respondent on suspension policy.

It is common cause the 2nd issue was not notified to the Claimant before he attended the disciplinary hearing. It did not constitute the charges made against him in 1st show cause letter. It is also confirmed by RW1 that the issue was one of the reasons for the Claimant's dismissal.

The Respondent failed to provide a fair procedure to the Claimant in respect of the disciplinary hearing. Respondent violated Section 41 of the Employment Act and the Rules of natural justice in this respect.

On the 1st reason for termination, RW1 confirmed that the Claimant did not participate in the committee that employed his wife.

RW1 did not know if the committee was aware that the candidate was the Claimant's wife at the time of recruitment.

RW1 further confirmed that the company policy did not prohibit employment of a spouse but only provided for conflict of interest. The Respondent did not provide any evidence that there was conflict of interest arising from an independent committee employing the spouse of the Claimant. Indeed many organizations do employ spouses provided there are safeguards to avoid conflict of interest.

From the evidence before court, the Respondent had no valid reason to terminate the employment of the Claimant. The Respondent violated Sections 41, 43 and 45 of the Employment Act, 2007 in the manner it terminated the employment of the Claimant.

The court declares the termination as unlawful and unfair.

The Claimant is entitled to compensation in terms of Section 49 (1) (c) and (4) of the Employment Act.

In this respect the Claimant served the respondent for well over 20 years in senior management position. The Claimant wished to continue serving the Respondent. The Claimant did not contribute to the termination. The Claimant was paid terminal benefits upon termination except in lieu of notice. The Claimant was treated unlawfully and unfairly in disregard of his good record of work for many years. The Claimant has failed to get another job due to his advanced age of 52 years at the time of termination.

The Claimant was also not given certificate of service to facilitate job applications. The Claimant has suffered loss and damage as a result.

The court awards the Claimant the equivalent of 12 months salary in compensation for the unlawful and unfair termination of employment and two months salary in lieu of notice in terms of the contract of service.

Judgment is entered in favour of the Claimant as against the respondent as follows:-

- i. Kshs 2,580,000 in compensation
- ii. Kshs 430 000 in lieu of two (2) months notice.

Total award Kshs 3, 010,000

iii. Interest at court rates from date of judgment till payment in full.

iv. Costs of the suit.

v. Certificate of service to be provided within 30 days.

DATED, SIGNED and DELIVERED at BUNGOMA this 30Th day of MAY, 2019.

HON. M. N. NDUMA, JUDGE

EMPLOYMENT AND LABOUR RELATIONS COURT

BUNGOMA

Appearances:

Mr. Oketch for Claimant

Mr. Makokha for Respondent.

Chrispo: Court Assistant.