



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NUMBER 2073 OF 2017

NAFTALI NYANDARA OMWOYO.....CLAIMANT

VERSUS

MINISTRY OF TRANSPORT, INFRASTRUCTURE,

HOUSING AND URBAN DEVELOPMENT

STATE DEPARTMENT OF INFRASTRUCTURE.....1ST RESPONDENT

MINISTRY OF WORKS, WELFARE

AND SPORTS ASSOCIATION.....2ND RESPONDENT

HON. ATTORNEY GENERAL.....3RD RESPONDENT

RULING

1. By a motion dated 17th October, 2017 the claimant/applicant sought an injunction restraining the 1st respondent from remitting to the Ministry of Works, Welfare and Sports Association (2nd Respondent) any of its purported dues pending the determination of the claim. The application was premised on the grounds inter alia that on 1st January, 1990 he was employed by Ministry of Water and Irrigation as a driver and allocated two unihuts at Wilson Airport. The Ministry did not inform him that he was under duty to pay rent for the allocated tow unihuts.

2. The claimant was transferred to Ministry of Roads on 21st October, 2010 and by a letter dated 19th February, 2013 the Ministry of Works Welfare and sports Association wrote a letter to staff of the Ministry of Water based at the Ministry of Works, Wilson camp, directing for payment of rent to Ministry of Works. The letter further informed them that they had been residing at the unihuts without remitting rent to it and that it was in the process of repossessing the houses and re-allocating the same to deserving officers due to failure by staff to pay rent.

3. The said repossession never took place instead on 15th March, 2016 the Ministry issued a demand notice indicating that they intended to renovate their unihuts and that they were to relocate the claimant to another unit as they renovate the Wilson ones and that the claimant should pay rent totaling to Kshs 70,000/= that was in arrears since 2012.

4. The Ministry without consultation or notice begun deducting Kshs 323.00 from the claimant's salary with effect from April, 2016 as recovery for the alleged arrears of Kshs 70,000/=. The applicant further stated that the Ministry of Water and Irrigation through a letter dated 21st February, 2017 asserted that while at its Ministry, the applicant was allocated two unihuts at Ministry of Water Depot at Wilson Airport which was initially managed by Ministry of Water Association and itself and that in the letter the Ministry observed that there had never been a default in its Ministry necessitating monthly deduction of its staff and because of numerous complaint pertaining to the management of the units from welfare, it requested the welfare to consider stopping the monthly deduction in the payslip as it was tantamount to selective application of regulations passed in the meeting of October 2016.

5. The 2nd respondent through its chairperson Mr George Macgoye stated that on 19th February, the 2nd respondent wrote a letter to the claimant and other staff members based at Ministry of Works informing them that they have been residing at the aforesaid premises without paying rent to the 2nd respondent's welfare. The 2nd respondent further indicated that it would repossess the house and reallocate the same to deserving officers of the Ministry in the event that the claimant does not pay arrears by 28th February, 2013.

6. On 7th November, 2016 the respondent wrote a letter to all the tenants residing at the Wilson camp including the claimant informing them that the 1st and 2nd respondent held a meeting and it was resolved that all tenants staying in the camp who were previously Ministry of Water tenants would pay as rent of Kshs 1500 to the 2nd respondent welfare with effect from 1st October, 2016. The claimant has therefore on several occasions been issued with proper and lawful notices by the 2nd respondent before the respondent made deductions from his payslips.

7. In his submissions, Mr Rakoro for the claimant submitted that when the claimant was employed on 1st July, 1990 by Ministry of Water and Irrigation he was allocated two unihuts but the employer did not inform him that he was under obligation to pay rent for the two unihuts. According to counsel the 2nd respondent started managing the said huts in 2006 but did not request for rent. Mr Rakoro further submitted that by its letter dated 19th February, 2013 it was the first time in 23 years that the 2nd respondent was asking for rent from the claimant and further that rent required and or the period of payment was not indicated. Counsel further submitted that the demanded amount of Kshs 70,650 did not specify for what period and how it was arrived at.

8. The 1st respondent through Wangechi Gichangi submitted that the deductions were lawful as per the human resource policies and procedures manual for public service which required officers occupying institutional houses to rent.

9. According to the counsel, the claimant received house allowance of Kshs 4500 but never surrendered this amount as per the Human Resource Policy and Procedure manual for public service. Christine Kungu for the 2nd respondent submitted that the claimant had been issued with proper and lawful notices by the 2nd respondent before the deductions were made from his payslip. Counsel further submitted that the claimant's acceptance of housing was voluntary hence the deduction was reasonable.

10. This is an interlocutory application. The concern of the court therefore at this stage is whether the applicant has demonstrated a prima facie case with probability of success and if damages would not be adequate remedy if successful in the main claim. The issue before the court for trial is whether the respondent was justified in making deductions from the claimant's salary on account of rent for premises occupied by the claimant by virtue of his employment. According to the claimant when he got employed in 1990 he was allocated the two units and was never informed he was required to pay rent until 2013, some twenty three years later. He further disputes the amount demanded stating that the respondent never showed how the figure was arrived at.

11. According to the respondent, the claimant was duly notified of the requirement to pay rent but refused or ignored to do so occasioning the deductions from his payslip. Further such deductions were authorized by the Human Resource Policies and procedure for public service 2006. The amount in dispute has been ascertained at Kshs 70,000/= and the monthly deductions are Kshs 323/= per month.

12. The court has further noted that the claimant was due to retire in July 2018 which is now past. Therefore there would be no more deductions from his salary. The only option, if the deductions were justified is to recover the same from the claimant's terminal benefits and or pension. If therefore in the retirement the court finds that the deductions were unlawful an order can be issued that a refund be made. There would therefore be no irreparable harm if an interlocutory injunction does not issue.

13. The application is therefore disallowed. Costs in the cause.

14. It is so ordered.

Dated at Nairobi this 17th day of May 2019

Abuodha J. N.

Judge

Delivered this 17th day of May 2019

Abuodha J. N.

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.