



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**  
**KENYA AT NAIROBI**

**CAUSE NUMBER 1236 OF 2015**

**SIMON LIANDA MAKHETI.....CLAIMANT/RESPONDENT**

**VERSUS**

**WELLS FARGO LIMITED.....RESPONDENT**

**RULING**

1. By a motion dated 1<sup>st</sup> July, 2015 the claimant sought orders among others that the respondent be directed to pay the claimant Kshs 12,000/= per month with effect from 1<sup>st</sup> April, 2015 pending the hearing and determination of the claim.
2. The application was brought on the grounds that the claimant took plea at Milimani Court pursuant thereto placed on suspension without pay to await the outcome of the case and that the claimant does not have any other source of income to sustain him and his immediate family members.
3. The respondent opposed the application and filed a replying affidavit through one Willis Ayieko Onyango who stated that he was the human resource director of the respondent. The respondent admitted that the claimant was on the 9<sup>th</sup> April, arrested on suspension of theft at a Bank where the claimant was posted as a security guard. The respondent however denied the claimant was suspended on 24<sup>th</sup> April, 2015 as no suspension letter was exhibited by the claimant in support of the averment.
4. According to Mr Onyango, the respondent had well set down procedures for suspension which included issuing suspension letter on an employee on suspension. Further the respondent had its own internal disciplinary mechanisms and does not depend on the outcome of criminal proceedings in making decision on employer misconduct. According to Mr Onyango the claimant annexed an off duty leave pass granting him 10 days off starting from 27<sup>th</sup> April, 2015 to 9<sup>th</sup> May 2015 for purposes of attending a burial.
5. It was therefore not probable that the claimant was suspended for the period of the criminal case since according to the off duty pass he was required to return to work on 9<sup>th</sup> May, 2015 without fail. Mr Onyango further deponed that the claimant deserted duty and this was evidenced by a letter from his advocate dated 28<sup>th</sup> April, 2015 issued a day after the claimant was granted 10 days leave to attend a funeral. According to the respondent the claimant never returned to work at the end of his leave on 9<sup>th</sup> May, 2015 and was therefore treated as a deserter.
6. The question whether the claimant was suspended from work is hotly contested by the respondent on credible grounds. The claimant attached to his memorandum of claim an off duty pass dated 27<sup>th</sup> April, 2015 granting him ten days off duty to attend a burial. He was required to resume work on 10<sup>th</sup> May, 2015. On 28<sup>th</sup> April, 2015 the next day after he was granted ten days off-duty, his advocate issued a demand note alleging the respondent had suspended the claimant pending the outcome of the criminal case the claimant was facing and that the respondent do pay the claimant his half salary in default of which the respondent would face legal action.
7. It is curious as the respondent observed, that the claimant would claim he was suspended from duty only a day after he had been granted off duty for ten days to attend a burial. If it is true as alleged that the claimant was on suspension pending the outcome of the criminal case, there was no need for him to seek permission for ten days to attend a burial.
8. The issue therefore of whether the claimant was on suspension and therefore amounted to a dismissal thus giving rise to the present claim is hotly contested. It would therefore not be appropriate to grant the order sought in the application herein. The same is therefore found without merit and is hereby dismissed with costs.
9. It is so ordered.

**Dated at Nairobi this 17<sup>th</sup> day of May 2019**

**Abuodha J. N.**

**Judge**

**Delivered this 17<sup>th</sup> day of May 2019**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.