



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA

CAUSE NO. 4 OF 2018

[Formerly Kisumu 205 of 2014]

(Before Hon. Justice Mathews N. Nduma)

GEORGE OJWOK ALUMA.....CLAIMANT/RESPONDENT

VERSUS

LAKE VICTORIA NORTH WATER

SERVICES BOARD KAKAMEGA-

BUSIA WATER SUPPLY.....RESPONDENT/APPLICANT

AND

KAKAMEGA COUNTY WATER & SANITATION

COMPANY LIMITED.....1ST INTERESTED PARTY

COUNTY GOVERNMENT OF KAKAMEGA.....2ND INTERESTED PARTY

BUSIA WATER & SANITATION

COMPANY LIMITED.....3RD INTERESTED PARTY

COUNTY GOVERNMENT OF BUSIA.....4TH INTERESTED PARTY

J U D G M E N T

1. The claimant was employed by the 3rd respondent on 16th March 2011 as a Supervisor earning a gross monthly salary of Kshs 41,595. The claimant worked until 4th June 2014. The claimant was served with a show cause letter by the Managing Director in which he was accused of stealing a water pump from Nambale High School and another one from Manyole Primary School. The claimant was further accused of having collected Kshs. 2,000, Kshs. 1,000 and Kshs. 500 from three different customers without giving a receipt.
2. The claimant responded to the show cause letter in writing on 5th June 2014 denying the charges.
3. The claimant was interdicted after three (3) months which letter he produced as exhibit '2'. The letter is undated. The letter of explanation was produced as exhibit '3'. The claimant was kept on half salary during the period of interdiction. After another three months, the claimant got a letter of suspension dated 17th September 2014 marked exhibit '5'. The claimant was paid house allowance and medical allowance until February 2018 when he received a letter of retirement dated 22nd January 2018.
4. The claimant seeks payment of three months salary in lieu of notice and Kshs 41,490 gross salary to the date of retirement, interest and costs.

Determination

5. This suit was filed on 20th August 2014 way before the claimant was retired from service by a letter dated 22nd January 2018.
6. The claimant sought an order for payment of the full salary during the period of suspension. The disciplinary proceedings were still pending then. The claimant also sought payment in lieu of three months' notice even though the claimant had not at the time been dismissed from employment. The claimant also sought payment of costs of the suit and interest.
7. The claimant did not amend the suit upon being retired on 2nd January 2018 even though the suit was heard on 27th September 2018. The letter of retirement was not produced before court to ascertain the reasons for the retirement of the claimant from service.
8. It is however the findings by the court that the respondents kept the claimant on interdiction and subsequent suspension on half pay with effect from June 2014. The letter of interdiction is undated.
9. It is the court's finding that the conduct by the respondents to keep the claimant under suspension and on half pay for a period of more than four (4) years until he was formally retired on 22nd January 2018 amounted to unfair labour practice and contravened the principles of natural justice of giving a fair hearing to the claimant on the charges made against him in the show cause letter. The conduct by the respondents amounts to a denial of justice and borders on extreme harassment and negation of human dignity. It is a travesty to keep disciplinary charges hovering over the head of an employee for such a long period.
10. The claimant continued to be attached to the respondent until he was retired and could not offer his services to another entity.
11. It is the court's finding that the claimant is entitled to the full salary and benefits from the date of interdiction to the date of retirement on 22nd January 2018. The claimant is entitled to terminal benefits including pension that takes into account his full salary in the sum of KShs. 41,595 and other accrued increments during the period to the date of retirement.
12. The claimant is also entitled to the costs of the suit and interest on the award.
13. In the final analysis, judgment is entered in favour of the claimant as against the 3rd respondent as follows:
 - (a) Payment of full salary (remaining ½ salary) and benefits from the date of interdiction in June 2014 until the date of retirement on 22nd January 2018.
 - (b) The 3rd respondent is to calculate terminal benefits, including pension for the claimant taking into account the full salary and benefits paid to the claimant up to the date of retirement on 22nd January 2018. The computation be filed in court within 60 days.
 - (c) Interest at court rates from date of filing suit till payment in full.
14. Costs of the suit.

Judgment Dated, Signed and delivered this 7th day of May, 2019

Mathews N. Nduma

Judge

Appearances

M/S Kitunyi for claimant.

Chrispo – Court Clerk