



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE 494 OF 2015

CHRISTINE KINYA GIKUNDA.....CLAIMANT

VERSUS

MANTRAC LIMITED.....RESPONDENT

JUDGEMENT

1. The claimant averred that on 3rd June, 2002 she was employed by the respondent as a Human Resource Manager. She worked until 17th April, 2014 when her contract according to her was unilaterally terminated by the respondent without any notice and without any legitimate cause. The claimant further pleaded that the respondent in utter disregard of her right informed her Bank that she was redundant and that the Bank ought to deduct any money owed to it from her last cheque.
2. The respondent on the other hand pleaded that claimant was not employed as Human Resource Manager but as Human Resource Administrator. According to the respondent it engaged a Human Resource Manager from 4th May, 2009 to oversee the overall department. Among the first tasks the HR Manager did was to assess the capability of the claimant as the HR Administrator and reasons for lack of capacity to ascend to a higher office. Among the issues identified were morale and self-doubts. The HR Manager then recommended to the Group HR Director to formally appoint the claimant as an HR Officer in an attempt to boost her morale, this was communicated to the claimant by the respondent's letter dated 20th April, 2010. What was noted however as areas of improvement in appraisal meetings were performance issues.
3. The claimant's performance had financial implications to the business such as demand to pay penalty for late submission of HELB deductions, serious payroll miscalculation. As the In-charge of payroll, the plaintiff was not diligent enough and the system was under calculating tax on the allowable pension values. There were also concerns about insubordination and the claimant was severally requested to observe decorum deserved of the office of HR Officer and stop bullying team members. She also extended the same and interpret language to the HR Manager.
4. The respondent further pleaded that it tried several interventions with the claimant including enrolling her in a 24 month development program run by the group- Business Education Certificate accredited to Cambridge University and several soft skill development program. After several attempts and counseling it was deemed necessary to correct the underperformance by formal warning letters. The claimant was therefore issued with the first warning letter on 14th October, 2013 but she declined to sign for it immediately.
5. She later signed it after colleagues witnessed her refusal. The claimant further out of habit declined to acknowledge performance improvement programme she was put on. The claimant was issued with a second and final warning letter on 28th February, 2014 which again she refused to acknowledge by signing even in the presence of her departmental colleagues. On 16th April, 2014 the claimant was reminded to attend a disciplinary hearing on 17th April, 2014 advised of her legal right to be accompanied by a representative of her choice.
6. The respondent was satisfied at the hearing that the claimant did not offer any reasonable explanation for her continued poor performance. Consequently a decision was made to terminate her services. The respondent conceded that while it's hard conducted redundancies in the course of its business, the claimant was never declared redundant.
7. In her oral evidence the claimant stated that she never had any work related problems with the respondent. She further stated that in 2009 she went on maternity leave but a month before an HR Manager by the name John Kiiru was recruited. She showed him what to do before proceeding on maternity leave. When she returned they were sharing duties and worked well until 2013 when she started having differences with John. He was complaining that she was not doing her work as she was supposed to. She further stated that none of the country managers gave her notice to show cause. It was her evidence that she never got suspended in the course of her work.
8. Ms Gikunda further testified that she was terminated on 17th April, 2014 but two days earlier Kiiru had asked her to prepare the payroll on

time. He called her to the office thereafter and also called on Wilson the IT Manager and said he wanted to discuss some issues. Mr Kiiru asked for some reports and also talked about staff appraisals and payroll. After the discussion she went back to her office and Kiiru brought her a termination letter thereafter. It was her evidence that there was no hearing before termination and that her terminal dues were calculated and deposited in her account.

9. In cross-examination she stated that her firm was registered in 2013 and she was a director. It was registered while she was still working for the respondent. She could not remember if there was any prior communication before the meeting either by email or memo. She also could not remember the number of warning letters she received. One of the issues against her was lateness and submission of some employee reports.

10. The respondent's witness Mr John Kiiru on his part stated that he was the respondent's HR Administrative Manager. He joined the respondent on 4th May, 2009. It was his evidence that there was a HR department when he joined and the claimant was the one who ran it. He took over the overall management of the department.

11. Mr Kiiru further stated that the claimant attended many courses meant to improve her work and boost her morale. Further the appraisals were annual but there were also quarterly and bi-annual reports. It was his evidence that he received complaints from staff that the claimant was shouting at them. He further stated that he put the claimant on performance improvement programme but the claimant refused. The Claimant never raised any complaint against him to the Managing Director and further she never acknowledged any warning letters from him.

12. Mr Kiiru further stated that the claimant was invited for a disciplinary hearing but never attended. He had to convene the meeting in the claimant's office and called a fellow manager to witness the interaction with the claimant because she used to accuse him of all manner of things. Regarding the letter to the same it was his evidence that there was a memorandum of understanding with Standard Chartered Bank and it was the claimant who negotiated it.

13. The MOU required that the Bank be notified of any termination of employment. In cross-examination he stated that he met the claimant at a Masters class in 2016 after she had left the respondent. He further stated that the claimant was reported to the Managing Director several times and that he was the one who prepared the handwritten minutes and that the claimant took her copy of the minutes.

14. The court has carefully reviewed and considered the pleadings and oral testimony of both parties in this dispute as well as the documents in support of respective positions. What is easily discernible is a very frosty relationship between the claimant and the respondent's Human Resource Manager Mr John Kiiru. Going by the trove of email and correspondence from Mr Kiiru to the claimant one cannot help deduce a relationship under so much strain. Before Mr Kiiru was hired, the claimant was the one in charge of Human Resource Department.

15. It was his evidence that when he joined he found the department not working very well hence he embarked on the process of streamlining it. From his own word his first target was the claimant who he felt was not motivated for her job and lacked the necessary training to enable her upward mobility. He organized for her to be formally appointed as the Human Resource Assistant and also be trained in the UK in order to boost her morale as he termed it.

16. According to Mr Kiiru, the claimant never improved despite all those so according to him it was decided to formally approach the claimant's issue through formal warnings. The claimant was accused of several misdeeds including bullying of junior staff and team members yet none other than Mr Kiiru came to give evidence. Besides no evidence was placed on record of any written complaint by any such staff against the claimant.

17. Mr Kiiru accused the claimant of insubordinating him yet he is the same person who summoned the claimant for disciplinary hearing and when the claimant refused to attend the meeting in his office, he opted to convene one in her office and call along a Mr Wilson to listen to his interaction with the claimant because she used to accuse him of all manner of things. The same Mr Kiiru thereafter handed the claimant a termination letter.

18. The court is of the view that there could have existed valid and justifiable reasons for terminating the claimant's services but the manner in which they were handled cannot help not to be construed as unfair. The soiled relationship between the claimant and Mr Kiiru demanded that the claimant's disciplinary issue be handled by someone else other than Mr Kiiru.

19. The court has not lost sight of this fact that the claimant was running another business similar to what she was employed to do for the respondent. This could have affected her performance and loyalty to the respondent but the respondent never seemed to have taken issue with that.

20. From the foregoing the court cannot help reaching the conclusion that the claimant service was terminated in an unfair manner and for unjustifiable reasons. The court therefore awards her six months' salary, that is to say the sum of Kshs 1,200,000/= as compensation for unfair termination of service.

21. This award shall attract interest at court rates from date of judgement until payment in full but shall be subject to taxes and statutory deductions. The claimant shall further have costs of the suit.

22. It is ordered.

Dated at Nairobi this 14th day of June, 2019

Abuodha J. N.

Judge

Delivered this 14th day of June, 2019

Abuodha J. N.

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.