



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1405 OF 2015

(Before Hon. Lady Justice Maureen Onyango)

FRANKLINE KIMATHI EUSTACE.....PLAINTIFF

VERSUS

G4S SECURITY SERVICES (K) LIMITED.....DEFENDANT

JUDGMENT

The Plaintiff filed suit seeking damages for unlawful dismissal arising out of an employment relationship with the Defendant.

He avers that he was employed by the Defendant vide a letter of offer dated 24th February, 2003, on a permanent basis at a gross salary of Kshs.7,374. On 16th October, 2006 the Defendant confirmed the Plaintiff in the position of Assistant supervisor on permanent and pensionable terms at an annual salary of Kshs.240,000/=.

By a letter dated 22nd June 2007, the Defendant terminated the Plaintiff's employment on allegations that he could not be exonerated from a loss of some monies belonging to Cooperative Bank, which was meant to be loaded into the said bank's ATM at Donholm Branch, Nairobi. That in the said letter of termination the Defendant indicated that investigations had been carried out into the alleged incident.

The Plaintiff avers that he was never at any time called upon to explain the incident or defend himself and in terminating his services the Defendant clearly condemned the Plaintiff unheard. He urges the court to allow his claim.

The Defendant filed a Response and led evidence to the effect that following the loss of Ksh.1,304,000/= the Defendant exercised its right to terminate the Plaintiff's contract of employment by payment of one month's salary in lieu of notice.

It is averred that the Defendant carried out investigations and involved all the crew members who were engaged in the exercise together with the Plaintiff which revealed that the Plaintiff and his crew were complacent in their duties. That they had breached their contracts of employment and could not be trusted to carry out further assignments.

The Defendant contends that the Plaintiff did not offer a satisfactory explanation for the loss of a customer's money and thus a decision was taken to terminate the entire crew. It paid the Plaintiff all his dues of one month's notice as per his contract of employment and 10 days accrued leave totalling to Kshs.41,334/= which after deducting his liabilities totalled to Kshs.25,184. The Defendant also avers that it followed due process in terminating the Plaintiff.

That the termination letter dated 22nd June, 2007, was addressed to the Plaintiff and published to the Defendant's Human Resources Director, Operations Director and ATMs Operations Manager. The publication was done on an occasion of qualified privilege in that as the aforesaid people are all officers of the Defendant who had a common interest in the affairs of the Defendant. The Defendant prays for the Claim to be dismissed with costs.

The parties made their respective submissions.

Determination

The Plaintiff's employment was terminated on 22nd June 2007. This was before the enactment of the Employment Act 2007 whose commencement date is 2nd June 2008. The Plaintiff's employment is therefore under the legal regime of the repealed Employment Act, 1976. Under Section 14 thereof, the employment contract was subject to termination by either party giving one month's notice or payment in

lieu thereof. There was no requirement for notification. The rules of natural justice were not applicable to the employment relationship and employees served at the employer's will, with the exception of termination notice. In such cases where the termination of employment was found to be wrongful, the measure of damages was limited to the notice period either as provided in the repealed Employment Act or as per terms of contract of employment. There is a wealth of jurisprudence in this respect. Among them are the Court of Appeal decision in **Dalmas Ogoye –V- KNTC Limited Nairobi, Civil Appeal No. 125 of 1996** and **Kenya Oil Field Services Limited -V- Peter Njoroge (Nairobi) Civil Appeal No. 124 of 1985**. In the latter case the Court of Appeal held that –

“The law is well settled that when the service Contract contains a termination clause the measure of compensation or indemnity for unlawful dismissal is the period specified in the termination clause. Where there exists no termination Clause the measure of compensation or indemnity for unlawful dismissal is for the REASONABLE PERIOD OF NOTICE depending on the nature of the employment.”

In the present case the Defendant exercised its right to terminate the employment of the Plaintiff. It explained the reason for the termination which even by the standards of the Employment Act, 2007 would be valid under Section 43 thereof. The Plaintiff was paid 30 days' salary in lieu of notice, 22 days worked and 10 days leave entitlement.

The only prayers in the claim were for general damages for unlawful dismissal, costs and interest.

Having found the termination to have been lawful, the Plaintiff is not entitled to damages.

For these reasons, the claim fails with the consequence that the same is dismissed. There shall be no orders for costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 14TH DAY OF JUNE 2019

MAUREEN ONYANGO

JUDGE