

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 2057 OF 2015

OBADIAH MUTUKU NGULI.....CLAIMANT

- VERSUS -

REAL MANAGEMENT SERVICES 2002) LTD.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Wednesday 31st July, 2019)

JUDGMENT

The agreed issue for determination in the suit per order of consent given on 18.06.2019 is whether the claimant is entitled to salary in lieu of notice and compensation for unlawful termination. The parties gave their respective evidence. The claimant filed submissions on 04.07.2019 through A.E. Kiprono & Associates and the respondent filed submissions on 15.07.2019 through S.K.Opiyo & Company Advocates.

The claimant testified that he was dismissed on 21.01.2015 without notice when he received the termination letter dated 21.01.2015. The letter addressed to the claimant stated thus:

“We refer to our numerous warnings to improve your behaviour and performance, but regret to note that inspite of our warnings, you have not improved. You have become very lazy in your performance on top of that you are colluding with Kenya Power & Lighting & Nairobi Water staff to extort money from the tenants and asking for bribes from the tenants to carry out your appointed duties.

Due to your misconduct, the company has decided to summarily dismiss you from the employment.” The letter set out the terminal dues that would be paid amounting to Kshs.7, 570.00.

The claimant had been employed by the respondent as the care taker for Shanzu Court in Nairobi. The claimant testified that he had served for 17 years and he had not been lazy. He further testified that he received verbal warnings from the respondent about the tenants’ complaints against him and his evidence was that the complaints were not valid at all. The claimant also testified that he was betrayed by his co-worker leading to his dismissal. He also testified that he received the termination letter on 20.01.2015 and that he was not given time to explain himself at the disciplinary meeting that was convened. Further he testified that on 21.01.2015 he held another meeting with Njiru and 2 managers. Njiru was asked him about the problem. He was subsequently given the dismissal letter. He confirmed that at the meetings the circumstances of the dismissal were discussed including a report by Jenny who had reported that the claimant had disconnected her water. Tom Odindo had complained that the claimant had failed to keep the compound clean.

The respondent’s witness (RW) was John Njiru the respondent’s employee being the supervisor in charge of the caretakers. His evidence was that the claimant and 2 other caretakers deployed at Shanzu residential estate failed on their duties. Tom Odindo was the residents’ chairperson. The minutes filed showed the complaints residents had against the claimant and other caretakers. Complaints ranged from failure to clean the compound to problems about water and electricity connections. The claimant was given a notice to show-cause dated 17.01.2015 to attend a meeting on 20.01.2015 for a disciplinary hearing. He attended the meeting and alleged it was mere betrayal. He was subsequently dismissed by the letter dated 21.01.2015. However minutes of the meeting of 20.01.2015 were not prepared and kept. RW confirmed that it was him who had telephoned the claimant to attend the meeting of 20.01.2015.

The Court has considered the evidence. Though in a contradictory manner, the claimant confirmed in his evidence that he had attended the disciplinary hearing. His evidence was in line with RW’s testimony that his defence at the disciplinary hearing was that he had been betrayed. The Court finds that the respondent complied with the due process of a notice and a hearing as per section 41 of the Employment Act, 2007. Further the evidence is that the tenants had made serious complaints against the claimant and the other two caretakers but the claimant appears to have failed to improve. The Court returns that the reason for termination was valid as per section 43 of the Act and there were no any established grounds to defeat the dismissal and which the Court finds to have not been unfair.

The Court therefore returns that the dismissal of the claimant was not unfair and the claimant was therefore not entitled to notice pay and compensation as prayed for. The Court further considers that the claimant partially succeeded by reason of the partial judgment by consent of the parties on 18.06.2019 and the respondent will pay partial claimant’s costs of the suit fixed at Kshs.10, 000.00 only.

In conclusion the respondent to pay the claimant **Kshs.10,000.00** plus **Kshs.33, 208.00** ordered in partial judgment by consent, thus a sum of **Kshs.43,208.00** payable by 15.09.2019 and failing interest to be payable thereon at Court rates from the date of this judgment till full payment.

Signed, dated and delivered in court at Nairobi this Wednesday 31st July, 2019.

BYRAM ONGAYA

JUDGE