



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 247 OF 2018

ISAAC MWENDIA MUTHONI.....1ST CLAIMANT

FLORENCE NJOKI MUTONGU.....2ND CLAIMANT

VERSUS

NG-CDF MWEA CONSTITIENCY.....1ST RESPONDENT

ISAAC K WAMUGUNDA.....2ND RESPONDENT

NICHOLAS K KIRIKO.....3RD RESPONDENT

HON J KABINGA WACHIRA.....4TH RESPONDENT

JUDGMENT

1. The Claimants sued the Respondents for allegedly giving them terminal leave without reasons as to why their contract of service should end prematurely. Before the matter could proceed for hearing on 15th July 2019 the 2nd Claimant withdrew her entire case against the Respondents as she had been reinstated thus leaving the 1st Claimant as the only litigant. The 1st Claimant's case is that he was appointed through an appointment letter dated 8th January 2016 as an account assistant in the CDF office Mwea Constituency. The contract was for a renewable term of 3 years and at the end of each contract, he was entitled to earn service gratuity. The Claimant averred that he worked diligently without any disciplinary issues until 1st July 2018 when the 2nd Respondent through its Fund Account Manager and its Chairman issued compulsory terminal leave letters to the Claimant without any reasons for the premature termination of the contract of service. The 1st Claimant's was invited to attend a meeting on 26th July 2018 to raise any queries but the intended meeting did not take place. He averred that he was required by the said letters of compulsory leave to hand over properties of the 1st Respondent that were in his possession by 31st July 2018. The 1st Claimant averred that the termination of his contract before the expiry of the period of 3 years was illegal and contravened fair labour practice as his expectation was that he would serve for 3 years. The 1st Claimant averred that the action by the Respondents was illegal and unlawful as it contravened the Fair Administrative Act, the terms of the contract, and the economic rights of the Claimant. The 1st Claimant averred that the Respondents demonstrated bias and violated his rights as provided under Articles 41, 47, 50 of the Constitution, the Fair Administrative Actions Act and the Employment Act. The 1st Claimant sought for a permanent injunction to issue against the Respondent not to terminate his 3 year contract until completion on 31st December 2018. The 1st Claimant also sought for a declaration that the compulsory terminal leave letter dated 1st July 2018 be declared unconstitutional, unjust, illegal, null and void and he be granted orders to enable him resume work immediately without any loss of benefits, victimization and/or interference of his employment contract of service by the Respondents without due process of the law being followed. The Court granted interim relief suspending the letters issued to the Claimant and deferred the implementation of the compulsory terminal leave letter dated 1st July 2018 pending the hearing and determination of this claim. The Respondents failed to comply with the court orders and were denied them audience in this suit.

2. The suit proceeded for hearing on 15th July 2019 and the 1st Claimant testified that he was dismissed in July 2018 and that he then came to Court and obtained orders but the Respondent failed to comply with the orders and filled his position as if there was no court order. He stated that he wrote several letters to the Respondents but they declined to listen to him. He stated that he was earning Kshs. 38,002/- a month and that he was given a salary cheque but the Respondents recalled it in April through the Secretary who was to communicate with him later. The Claimant testified that he suffered and been intimidated by the Respondents and sought for the court to grant his prayers as requested.

3. The 1st Claimant's dismissal was unlawful, unfair and in contravention of the right to fair administrative action. As shown in this case, the Respondents did not have any cause to dismiss the Claimant from his employment. He had a contract that was due to run till 31st December

2018 and thereafter could be renewed. He was not given an opportunity to serve it to completion. He was not given any of the safeguards under Section 41 of the Employment Act and his termination was not in accord with the law. The attempt by the court to reinstate him pending the hearing and determination of the suit was frustrated by the Respondents and it seems that would not be an efficacious remedy for the 1st Claimant though it worked for the 2nd Claimant. Having proved his case on a balance of probabilities he is therefore entitled to remedies as follows:-

- i. Payment of Kshs. 228,012/- being his salary for the months of July to December 2018
- ii. Kshs. 456,024/- being the maximum compensation under Section 49(1) of the Employment Act for the egregious dismissal and disdain for court orders
- iii. Costs of the suit
- iv. Interest at court rates on the sums in i) and ii) from the date of filing suit till payment in full.

It is so ordered.

Dated and delivered at Nyeri this 30th day of July 2019.

Nzioki wa Makau

JUDGE

I certify that this is a

true copy of the Original

Deputy Registrar