



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 189 OF 2016

(Before Hon. Justice Mathews N. Nduma)

ROLEX OWINO OMONDI.....CLAIMANT

VERSUS

KENYA AIRPORTS PARKING SERVICES (KAPS) LIMITED.....RESPONDENT

JUDGMENT

1. The claimant filed the suit on 5th July 2016 seeking the maximum compensation for unlawful and unfair dismissal and payment of terminal benefits, including Kshs. 80,000 in lieu of one month notice and Kshs 29,000 in lieu of leave days not taken.
2. The claimant testified under oath and adopted a witness statement attached to the memorandum of claim as his evidence in chief. CW1 told the court that he was employed by the respondent on 27th June 2013 as a supervisor. The claimant produced the letter of employment dated 27th June 2013. He was initially paid Kshs. 30,000. The claimant worked continuously and diligently until the 6th May 2016, when he was called to the respondent's head office at Nairobi and was issued a letter of termination dated the same date. The letter of termination states that the termination was for serious misconduct in that the claimant had despite discussions regarding discharge of his duties with management failed to carryout lawful and reasonable instructions that were consistent with his contract of employment. The claimant was to be paid one month salary in lieu of notice.
3. CW1 denied the allegations that he had not followed lawful and reasonable instructions stating that his work record was good and he had never been issued verbal or written warning prior to the termination. That the claimant had never been informed of any wrong he had committed until the date of termination. That he was not issued notice to show cause nor was he called to a disciplinary hearing. That he had no prior notice of the termination and therefore the termination was unlawful and in violation of *Sections 36, 41, 43, 45 and 46 of the Employment Act, 2007*.
4. CW1 added that between November and December 2013, he was sent to a bench marking exercise in Kisumu.
5. In 2014, he was promoted to Assistant Zone Manager covering Western Kenya and the Rift Valley. The claimant signed another contract dated 23rd July 2013 which was produced as exhibit 2. The appointment was from 1st June 2014 even though the document had a date error.
6. The claimant went on annual leave from 19th April 2016 upon filling leave application form produced as exhibit '3'. The claimant was on annual leave when the Human Resource Assistant named Lucy summoned him on 4th May 2016 to report at head office on 6th May 2016. CW1 reported at the head office at 8.00 am and the Human Resource Manager named Ruth asked him to wait until noon. CW1 waited up to 5 p.m when he went to the Human Resource Manager's office to tell her that it was getting late and he needed to travel. The Human Resource Manager then issued him two copies of termination letters produced as exhibit '4'. CW1 stated that he was shocked since this was the last thing he expected. That he had worked closely with Ruth but she had not hinted this outcome to him. CW1 only told her the bosses have decided. The claimant prays for compensation for the unlawful termination and payment of terminal benefits as prayed.
7. CW1 was cross examined by Mr. Abira for the respondent. CW1 denied that he was incompetent and said he was not aware that the person who replaced him doubled revenue collection which was his main mandate whilst he worked. CW1 denied he was lazy and that he was insubordinate. The claimant stated that he earned Kshs. 80,000 by the time of termination. He said the date of the contract was mistyped. CW1 said that he learnt the reason for termination from the advocate in court since the letter of termination was not specific. CW1 said there was no evidence of doubled revenue collection before court as alleged by Mr. Abira.
8. The respondent did not call any witness to rebut the testimony by CW1. The evidence by CW1 remains uncontroverted therefore. Allegations in the statement of Response filed on 8th August 2016 were traversed in the reply to the statement of response filed by the claimant on 17th August 2016. These averments do not constitute any evidence.

9. The claimant has therefore proved on a balance of probabilities that his employment was unlawfully and unfairly terminated without prior notice, notice to show cause or any disciplinary hearing on 6th May 2016 in violation of *Sections 36,41,43,45 and 46 of the Employment Act*. The claimant is therefore entitled to compensation in terms of *Section 49(1) (c) and (4) of the Act*.

10. The claimant is also entitled to payment of Kshs. 80,000 in lieu of notice and Kshs. 29,33 for leave days not taken and the court grants him the two items accordingly.

Compensation

11. With regard to compensation the claimant has established that his employment was unlawfully and unfairly terminated. That he had no prior warning or record of misconduct prior to the termination. That he was not given prior notice of the intention to terminate his employment and this put him in shock. The claimant did not contribute to the sudden termination from the evidence before court. The claimant was not paid any terminal benefits or compensation at the time of termination. The claimant had served the respondent for a period of about three (3) years and had good prospects of continued long employment with the respondent.

12. The claimant had gotten another job as Assistant Manager, Corporate Marketing with Mega Properties Limited. The claimant had therefore mitigated the loss and damage he suffered by fact of the unlawful and unfair termination of employment.

13. Considering all the above circumstances and the case of *Pamela Nelima Lutta vs. Mumias Sugar company Limited (2017) eKLR* in which the court granted the claimant general damages equivalent to twelve months gross salary for unfair and unlawful dismissal, the court awards the claimant the equivalent of three (3) months salary in compensation for the unlawful and unfair termination.

14. Judgment is entered in favour of the claimant as against the respondent as follows:

(a) Equivalent of three months salary in compensation in the sum of Kshs. 240,000

(b) One month salary in lieu of notice Kshs. 80,000.

(c) Kshs. 29,333 in lieu of leave days not taken.

Total award Kshs. 349,333.

(d) Interest at court rates from date of filing suit with regard to item (b) and (c) above and from date of judgment with regard to item (a) above till payment in full.

(e) Costs of the suit.

Judgment Dated, Signed and delivered this 9th day of July, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Maloba for Claimant

Mr. Abira for Respondent

Chrispo – Court Clerk