



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT BUNGOMA

CAUSE NO. 47 OF 2018

WILFRED OLOOKO MUROKA.....CLAIMANT

VERSUS

NZOIA SUGAR COMPANY LTD.....RESPONDENT

JUDGMENT

The Claimant was granted bonded study leave by the Respondent which commenced on 7th January 2005 to study certified secretarial course. The Claimant was bonded upon completion of the course to serve the Respondent for a period of at least three years.

The Claimant's case is that the Respondent terminated his employment by a letter dated 22.7.2005 for dereliction of duty whilst he was away on study leave without an opportunity to explain why his employment ought not to be terminated.

The Claimant testified that the company secretary of the Respondent Mr. S.S Wasilwa intervened in the matter and reinstated the Claimant back to his job by a letter dated 4.9.2008. That the Respondent confirmed the reinstatement and refunded the Claimant fees paid for his training. The Claimant avers that he is an employee of the Respondent to date therefore and the court should re-instate him back to his position to which the Respondent has failed and/or neglected to restore the Claimant to.

The Claimant prays for a sum of Kshs 37, 469, 974.05 being recoverable compensation for loss of income during the prolonged period he has been kept away from work from June 2005 to June 2008.

The Claim is set out as follows:

- (a) 3 year guaranteed job security period from June 2005 to June 2008 at Kshs 29,685 per month for 37 months in the sum of Kshs 1,098,345.
- (b) Living allowance on prolonged study leave from June 2005 to June 2008 at Kshs 10,000 per month for 37 months in the sum of Kshs 592,000
- (c) Payment in lieu of leave days not taken at 30 days for 3 years in the sum of Kshs 102, 756
- (d) Labour officers recommended salary at Kshs 29,685 x12 months Kshs 356,220.
- (e) Compensation for lost income from 7.1.2005 to expected date of retirement on 21.1.2022 (215 months) Kshs 25, 529
- (f) Compensation for disruption of study leave form 10.1.2005 to 30.6.2005 .
- (g) Advance loan given to pay Barclays Bank Loan in the sum of Kshs 208,446,95.
- (h) Total Claim Kshs 37,469,974.05

The Claimant relied on a written statement dated 7.7.2018 as his evidence in chief and produced list of documents filed in court in support of his case.

The Claimant testified that the 3 year bond was unlawfully terminated whilst he was away on study. That Respondent stopped paying for the training which act disrupted his studies and caused it to be unduly prolonged. That the termination of the 3 years job security was done without lawful cause because the reason given was a fabrication. That a disciplinary hearing was held in the Claimants absence on 10.1.2005 and 19.4.2005.

The Claimant termination was also effected in his absence and was unlawful and unfair. That when he was given opportunity by Mr. Wasilwa to explain his case it resulted to reinstatement by Mr. Wasilwa. That the reinstatement was however frustrated by the Respondent to date hence the suit. The reinstatement was with effect from 4.9.2008 as per exhibit PEX69.

That the entire management ratified the decision to reinstate him and the Claimant was paid staff training claims in the sum of Kshs 124,342 on 7.11.2008. This covered six months training period and he was denied one month.

That this was evidence that he was still an employee of the Respondent. That as at 2005 he was 42 years and is now about 56 years and cannot get employment elsewhere. The Claimant prays the suit to be allowed and he be granted the various reliefs set out in the amended statement of claim.

Under cross examination the Claimant admitted that the letter of termination dated 22.7.2005 contains reasons for termination. Claimant admitted that he was paid Kshs 208, 446.95 as terminal benefits upon termination.

Claimant admitted that he did not get a letter reinstating him back to work. Claimant admitted that from the time he left for training on 7.1.2005 he never returned back to Respondent to date.

Claimant stated that termination of his employment took place while he was away on training. The Claimant stated that he was stationed in the Finance Department, purchasing section. That he was in charge of overseas procurement. Claimant stated that he handed over his docket before he left and made handing over reports to his junior Mrs Joyce Njoroge.

The Claimant denied that the report had several gaps. The Claimant admitted having received a letter dated 14.1.2005 and had replied to it.

The Claimant stated that this was a show cause letter and he had denied the allegations made against him in his reply. The Claimant admitted that he was invited to attend a disciplinary committee meeting in April 2005. Claimant admitted that he did not attend the disciplinary meeting since he was in college and was denied permission to attend by the Dean of Students. The Claimant also stated he had no transport money to attend the disciplinary hearing. The Claimant stated that he wrote to the Respondent a letter dated 30.6.2005 explaining that he was unable to attend the hearing. The Claimant denied having received a letter from Respondent dated 16.5.2005. Claimant admitted having received a letter dated 6.7.2005 to attend a disciplinary hearing on 7.7.2005.

The Claimant attended the hearing this time round and defended himself.

The Claimant denied having delayed to float quotations to procure factory maintenance services from abroad. The Claimant denied that maintenance of the factory was delayed due to his negligence adding that he had handed over to his junior before he left for studies. Claimant insisted that this was a malicious falsehood aimed at removing him from work. The Claimant denied that maintenance was delayed in any event adding that the situation was saved.

The Claimant insisted that the company secretary had powers to reinstate him.

The Respondent called RW1 Brian Omwera Keya an internal trainer in the Human Resource Department of the Respondent. RW1 relied on a witness statement dated 20.9.201. RW1 produced exhibits '1' to '6' in support of the Respondent's case. The Claimant testified that in the year 2005, he was Assistant training officer. That he identified training needs and local and international training programmes.

RW1 stated that the issue that led to the termination of employment of the Claimant arose after he had left for training. That the matter arose once the Claimant handed over his docket.

RW1 stated that there was delay of a purchase requisition. That this was discovered on 10.1.2005 when the Claimant had left. That the Respondent wrote to the Claimant a letter dated 14.1.2005 which was a notice to show cause.

The Claimant was accused of dereliction of duty. RW1 explained that the Respondent retained disciplinary authority whether an employee was on study leave or not.

RW1 testified under cross examination that it was not necessary to await the Claimant to complete his training programme once the misconduct was discovered. RW1 stated that upon termination of employment the training sponsorship and the 3 year work bond after training ceased.

RW1 denied that the termination of employment of the Claimant was pre-arranged.

RW1 stated that the Claimant attended two disciplinary committee hearings in July 2005 before the verdict to terminate the employment of the Claimant was made on 19.4.2005. RW1 stated that the Claimant got full opportunity to explain his case but the Respondent was not satisfied with the explanation hence the termination.

RW1 prayed that the suit be dismissed.

Determination

The issues for determination re:

- i. Whether the employment of the Claimant was for a valid reason and followed a fair procedure and
- ii. Whether the Claimant is entitled to the reliefs sought.

At the time the employment of the Claimant was terminated in the year 2005 the present Employment Act 2007 had not been enacted.

The Claimant bears the onus of proving on a balance of probabilities in terms of Section 107 and 108 of the Evidence Act that the termination of his employment was wrongful and unfair.

The Respondent only bore the burden of rebuttal at the time as enshrined in the evidence Act.

Upon a careful consideration of the testimony by the Claimant vis a vis that by RW1 the court has arrived at the following findings of fact.

- (a) That the Claimant was in charge of procurement of factory maintenance services and spares on an annual basis.
- (b) That the Claimant took a study leave sponsored by the Respondent to complete CPS programme on 7.1.2005.
- (c) That whilst the Claimant was on study leave he received a notice to show cause that he had failed to timeously procure the maintenance services and spares before he left for the study hence occasioning delay to the factory maintenance dated 14.1.2005.
- (d) The Claimant responded to the show cause letter and in July 2005 attended two disciplinary hearing meetings where he explained his case.
- (e) The disciplinary committee was not satisfied with the explanation the Claimant gave and recommended termination of the employment of the Claimant which the Respondent proceeded to do.
- (f) That Mr. Wasilwa in 2008 tried to salvage the situation and caused the Claimant to be paid part of the training expenses. The Claimant was however unable to prove that the Respondent had reinstated him back to work as he alleged or at all.

The court is satisfied that the Claimant never returned to work again for the Respondent from the time the Claimant went for studies.

The court is satisfied that the Claimant was paid terminal benefits in the sum of Kshs 208, 446.95 upon termination of employment.

It is the court's considered finding that the Respondent has demonstrated that it had a valid reason to terminate the employment of the Claimant. It is also the finding by the court that the Claimant though was away on training was offered opportunity to explain himself both in writing and by attending two disciplinary committee meetings before the decision to terminate his employment was reached.

The claim by the Claimant that his termination from employment was unlawful and unfair lacks merit and is dismissed.

Remedies:

Following the finding above, it is the court's decision that the Claimant is not entitled to any compensation for the termination of his employment as set out in the statement of claim. Accordingly the claim for compensation for disruption of study leave, compensation for lost years of work and any other claim for payment of salary after the date of termination on 22.7.2015 are dismissed.

The Claimant has not demonstrated he was owed further terminal benefits over and above the Kshs 208,446,95 final benefits he was paid which he erroneously terms to be advance amount given to payoff his Barclays Loan.

The testimony by the RW1 clearly showed this to be final terminal benefits due to the Claimant.

The Claimant is not entitled to payment in lieu of leave days for the 3 years period he was not at work and on study leave until the date of his termination.

The Claimant has also failed to demonstrate that he is entitled to payment of more salary than he otherwise earned according to alleged recommendation by a labour officer.

The payment made upon intervention by Mr. Wasilwa in court's view catered for the sponsorship the Claimant was entitled to up to the date of termination.

In the final analysis the court dismisses the entire suit by the Claimant as against the Respondent. Considering the circumstances of the case and the length the Claimant has gone to, to put forth his case and given that the Claimant has not been at work all this time, the court deems this an appropriate case for each party to bear their costs of the suit.

DATED, SIGNED and DELIVERED at BUNGOMA this 26Th day of SEPTEMBER, 2019.

HON. M. N. NDUMA, JUDGE

EMPLOYMENT AND LABOUR RELATIONS COURT

BUNGOMA

Appearance:

Claimant in person

J.O Makali for Respondent

Joy: Court Assistant.