



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO 1824 OF 2014

ELIZABETH NJERI KINYUA.....CLAIMANT

VERSUS

JOEL MUGO.....1ST RESPONDENT

NORTHLINE LIMITED2ND RESPONDENT

J U D G E M E N T

1. The Claimant pleaded that by a letter of appointment dated 7th October, 2013 she was employed by the respondent as an office administrator at a monthly salary of Kshs. 35,000/=.
2. On 8th September, 2014 the respondent unlawfully terminated her contract and failed to pay her terminal benefits. The Claimant therefore sought payment of Kshs. 512,750 as his terminal dues.
3. According to the Claimant, the 2nd respondent as director for 1st respondent through a letter dated 15th September 2014 attempted to institute disciplinary proceedings against the Claimant but the same was never sent via e-mail as alleged and the hard copy as posted was received way after the date indicated for disciplinary proceedings had passed.
4. The respondent on the other hand averred that it did not unlawfully terminate the Claimant's service. According to the respondents, the Claimant absconded duty after she was asked to avail her original certificates for verification and authentication. The 1st respondent Managing Director was prompted to ask the Claimant to avail the documents after her over time noticed that the Claimant could not type letters without mistakes despite having ICDC and Pitman Examination Certificates and Diploma in HRM from Kenya Methodist University. Further the Claimant used to mix up letters and end up sending them to wrong people and that the Claimant was generally incompetent.
5. According to the respondent, the Claimant instead of availing the certificates issued a demand letter through her lawyer.
6. The 1st respondent replied to the demand letter through a letter dated 15th September, 2014 in which it denied terminating the Claimant's services and by the said letter, the respondent invited the Claimant to the respondent's offices to show cause why her services should not be terminated for being absent from work without permission.
7. The respondent therefore contended that it was the Claimant who terminated her contract when she failed to obey a reasonable request to avail her original certificates and subsequently failing to attend the meeting at which she would have shown cause why her services should not be terminated.
8. In her oral evidence the Claimant stated that she started working on 13th October, 2013 and was terminated in September, 2014 it was on a Friday. The 2nd respondent told her, he was not happy with her work. She was asked to come for her termination letter on Friday.
9. On Monday she went with a letter to acknowledge the return of the office phone but the 2nd respondent tore the letter and told her that unless she resigned she would be sacked and the 2nd respondent would make sure she never got a job anywhere else.
10. The cross-examination she stated that she had diploma in HR from Kenya Methodist University and that the respondent was in logistics business. According to her she had never worked in a logistics firm before. It was her testimony that she had no problem producing her original certificates and that the respondent never asked for them.
11. The respondent's witness Mr. Pius Mwaura stated that the Claimant was an office administrator and that she was sourced by the respondent sister company. The Claimant was to assist in the running of the respondent's office like filing, allocating files, receipting etc.

12. According to him, initially there was no intention to terminate the Claimant's service. She was simply requested for her credentials which was a requirement for tendering and bodies the respondent dealt with.

13. Further, that there was a meeting in Eldoret in June and the Claimant was appointed Secretary of the meeting to take minutes. After two months, he requested for the minutes and never got them. A decision was made to upgrade staff through training and the Claimant went through these trainings. When the respondent requested for credentials everyone except the Claimant furnished them. The Claimant was therefore asked not to report to work until she furnished her documents.

14. The request was polite. According to him the respondent received the demand letter on the same day claiming the respondent terminated the Claimant's services. However, no decision had then been made to terminate her service.

15. In cross-examination, he stated that he never issued the Claimant with a written memo requesting for credentials, the request he stated was verbal.

16. The respondent herein states that a decision was taken to terminate the Claimant's service after she absconded duties following being called upon to produce the original certificates for verification. The respondent's witness Mr. Pius Mwaura however informed the Court that the Claimant having failed to furnish her original certificates for verification despite being called upon to do so severally was asked to stay away from work until the documents were produced. Mr. Mwaura however informed the Court that the request for the documents was made verbally.

17. The issue of production of original certificates features for the first time from the documents filed in Court, through a letter dated 15th September, 2014 calling upon the Claimant to attend a show cause hearing on 18th September, 2014 at 0900 hrs. The letter is noted to have been sent via email as well. The hard copy though addressed to the Claimant through her postal address, there was no certificate of posting attached to show the letter was ever posted to the Claimant. The Claimant denied receiving the email copy but conceded that she received the hard copy long after the date for the show cause meeting had taken place. The Court does appreciate this, since a letter dated 15th and not showing when it was posted provides very little time and perhaps the risk of receiving the same well after the 18th September. The Claimant's contention is therefore plausible in the circumstances.

18. Neither party exhibited the termination letter in order for the Court to be able to see the reasons for the termination. The Court will therefore not delve into the justification or otherwise of the reasons for termination. However, as outlined above, the process followed in terminating the Claimant, fell short of the requirements set out in the Employment Act. That is to say, the respondent failed to show it followed the procedure set out under Section 41(2) of the Employment Act.

19. In circumstances the Court enters judgement against the 1st respondent for the Claimant follows: -

Kshs.

(a) One month's salary in lieu of notice 35,000

(b) Six months salary as compensation for

Unfair dismissal 210,000

245,000

(c Costs of the suit

20. Items (a) and (b) shall attract interest at court rates from date of judgment but shall be subject to taxes and statutory deductions.

21. It is so ordered.

Dated at Nairobi this 20th day of September, 2019

Abuodha J. N.

Judge

Delivered this 20th day of September, 2019

Abuodha J. N.

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge