



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. 400 OF 2014

(Before Hon. Lady Justice Maureen Onyango)

AISHA OMAR RAMADHAN.....CLAIMANT

VERSUS

THE CHAIRMAN,

LANGATA CONSTITUENCY DEVELOPMENT FUND.....RESPONDENT

JUDGMENT

Vide her Amended Memorandum of Claim Amended on 4th May, 2018 and filed in Court on 16th May, 2018, the claimant avers that her employment was unfairly and wrongfully terminated by the respondent herein a body corporate established pursuant to the Constituency Development Fund Act, 2013.

Her case is that she was employed by the Lang'ata Constituency Development Fund vide an Employment Agreement dated 1st June 2012 on a fixed term contract for a period of 4 years commencing 1st June 2012. That the contract was to lapse on 31st May 2016. Her monthly salary was Kshs.30,000/-.

The Claimant avers that she worked diligently and to the Respondent's satisfaction until 10th October 2013 when her services were unfairly and unilaterally terminated by the Respondent without any notice vide its letter dated 10/10/2013 on allegation that she was not qualified to be employed by dint of Section 24(9) of the Constituency Development Fund Act, which allegation was vehemently denied by the Claimant.

Aggrieved by the decision of the Respondent to unfairly and wrongfully terminate her contract, the Claimant filed the instant Claim seeking the following reliefs:-

(i) Payment of Kshs.2,246,400/- consisting of the following:

a) Salary for 2 years and 7 months Kshs.1,650,000

b) Salary for the months of October

and November 2013 Kshs.60,000

c) 3 months' salary in lieu of notice Kshs.90,000

d) Gratuity for 4 years Kshs.446,400

Total Kshs.2,246,400

(ii) General damages for termination of employment.

(iii) Full benefits, pro-rata leave and compensation for wrongful termination and/or dismissal for this Claim.

(iv) Any other relief that this Court deems fit to grant.

The Respondent in its Statement of Defence dated and filed in Court on 10th March 2015 denies having employed the Claimant herein as alleged. It is further contended that her employment was (if at all) by the previous Constituency Development Fund, which contract automatically terminated upon appointment of a new committee as was the case of the Claimant's contract by virtue of Section 24(9) of the Constituency Development Fund Act of 2013.

The Respondent further averred that it is not in any way connected with the previous committee and is therefore not indebted to the Claimant in any way. It is further the Respondent's contention that the Claimant failed to meet the threshold as provided under Section 24(17) of the Constituency Development Fund Act and as a result it was not bound to employ her.

The Respondent contended that any dispute and/or complaints as raised by the Claimant herein ought to be forwarded to the CDF board by dint of Section 49(1) of the CDF Act, 2013. The Respondent further contended that the Claimant is not entitled to the reliefs sought in her Memorandum of Claim.

In conclusion, the Respondent urged the Court to dismiss the instant Claim with costs to the Respondent.

The claim was fixed for hearing on 4th April, 2012 with the Claimant testifying on her own behalf. The Respondent failed to call any witnesses to rebut the Claimant's evidence.

Claimant's Case

In her evidence the Claimant, reiterated the averments made in her Memorandum of Claim. She adopted her witness statement dated 4th May 2018, filed in Court on 16th May 2018 as her evidence in chief. She testified that she worked as a secretary earning a monthly salary of Kshs.30,000/-.

The claimant further testified that her engagement with the Respondent was a on fixed term contract for the period between 1st June 2012 and was expected to be completed on 1st May 2016. She further testified that she did not complete the contract period as her services were terminated on 10th October 2013 vide the Respondent's letter that was handed over to her on 3rd November 2013.

The claimant stated that the reason for her termination as given in her termination letter was that she was not qualified to fill the position, which assertion the claimant disputed. She further averred that she was not given any notice prior to the termination and was equally not paid salary for 2 months.

The claimant contended that the notice period as provided by her employment contract was 3 months. She urged the Court to allow her Claim as drawn.

The Respondent's case was closed as it failed to attend the hearing despite being served.

Submissions by the Parties

The Claimant submitted that the termination of her contract was not in accordance with fair procedure as provided under Section 41, 43 and 45 of the Employment Act, 2007. She further submitted that the reasons provided for the termination in the Respondent's letter dated 10th October 2013 was not valid as Section 24 of the CDF Act that the Respondent relied on in terminating her contract only applies to CDF Committee Members and not staff as herself. The Claimant therefore contended that the reason cited for the termination was not valid and as such the termination was unfair.

The Claimant further submitted that she is entitled to the reliefs sought in her Amended Memorandum of Claim by dint of Section 49 of the Employment Act. To buttress this argument the Claimant cited and relied on the Authorities of ***Teresa Carlo Omondi Vs Transparency International- Kenya (2015) eKLR*** and ***Abraham Gumba Vs Kenya Medical Supplies Authority (2014) eKLR***.

In conclusion the Claimant urged the Court to allow her Claim as drawn.

Respondent's Submissions

The Respondent on the other hand submitted that it had a valid reason to terminate the Claimant's employment and that due process was followed. It further submitted that the Respondent was restructured and thus there was need to completely overhaul to ensure compliance with the provisions of the new constituency Development Fund Act, 2013.

The Respondent submitted that the Claimant is not entitled to the reliefs sought in her Memorandum of Claim as due procedure was followed in the termination. The Respondent relied on Section 40 of the Employment Act, 2007 and the case of ***Kenya Airways Limited Vs Aviation and Allied Workers Union Kenya & 4 Others***.

In conclusion the Respondent submitted that the Claimant was not unfairly terminated as alleged and that due process was followed as provided under the Employment Act, 2007. The Respondent urged the Court in the circumstances to dismiss the instant Claim against it with costs.

Analysis and Determination

There is no dispute that the Claimant was employed by the Respondent on a fixed term contract with effect from 1st June 2012 in the position of Secretary of Lang'ata Constituency Development Fund. It is further not in dispute that the Contract was unexpectedly cut short on 10th October 2013.

The letter of termination of the claimant's contract states the reasons for termination as follows –

“LANGATA CONSTITUENCY DEVELOPMENT FUND

Ref. LCDF/Job/003/2013. Date: 10th October 2013

Aisha Omar Ramadhan,

P. O. Box 20095 – 00100,

Nairobi.

Dear Madam,

RE: TERMINATION OF AGREEMENT AND APPLICATION OF POSITIONS.

The above subject refers. It is worthwhile to note that the new Langata Constituency Fund Committee (LCDF) wishes to terminate your employment agreement with the previous LCDF. The committee action is informed by;

1. The Constituency development Fund Act 2013 in section. 24 subsections 1.7 stipulates the kind and quality of employees which CDFCs should engage. The LCDF wishes to adhere to the above provisions by especially encouraging competitive staff recruitment thus affording all candidates equal opportunity and openness. (Kindly find the attached memo Ref: CDF BOARD/CIRCULARS/VOL.T.I/166 dated 24th June 2013 for ease of reference).

2. The term of Constituency Development Fund Committee as outlined in the CDF Act 2013 in section 24 subsection 9 is three years; but in case of a general election or a by election the process outlined in CDF Act section 24 subsection 3(a-l) have to be adhered to. Having noted the above, it was wrong for the former LCDF to have renewed and signed a 4 year fixed contract, on 1st day of June 2012 knowingly that a general election was in the offing.

3. As indicated on your contract dated 1st June 2012, the employment may be terminated before the expiry of the term of agreement by the way of either party giving one month's written notice or an equivalent, of one's month salary in lieu of notice.

As we continue to greatly appreciate the good work you have continued to render the Langata CDF office and the People of Langata at large, it is paramount to inform you that the new LCDF management is undergoing transformation to comply with the new Act. It is in this line that we could like to inform you that we are advertising all Position including yours and may this letter serve as a notification of employment termination and an invitation to apply for the outlined positions on the employment advertisement.

With thanks

SIGNED

Francis Ochwacho

CHAIRMAN, LANGATA CONSTITUENCY DEVELOPMENT FUND”

Section 24(17) of the Constituency Development Fund Act 2013 (CDF Act) provides that –

The committee may employ staff, not exceeding five in number, and such staff shall have knowledge in information and communications technology, construction and basic accounting.

The respondent did not state that the claimant was not qualified in terms of Section 24(17). It is however noted that he claimant did not attach the circular referred to in her letter of termination dated 4th June 2013.

The other two grounds in the claimant's letter of termination are not valid grounds for termination either. The claimant cannot be blamed for having been given a contract beyond the term of office by the previous committee, while termination on notice must be for valid reason as provided for in Section 41 of the Employment Act. Further, no legal provision was cited to support the contention that staff contracts for Constituency Development Funds cannot go beyond the term of office of the incumbent Member of Parliament.

For the foregoing reasons, I find that the respondent did not prove valid reason for termination of the claimant's contract.

The claimant prayed for payment of the salary for the remainder of the term of her contract being two years and seven months. This is not payable as it is neither a provision of her contract nor recognised in law. As was stated in the case of **D. K. Njagi Marete –V- Teachers Service Commission (2013) eKLR Industrial Cause No 379 (N) of 2009** where the court held:

“What remedies are available to the Claimant? This Court has advanced the view that employment remedies must be proportionate to the economic injuries suffered by the employees. These remedies are not aimed at facilitating the unjust enrichment of aggrieved employees; they are meant to redress economic injuries in a proportionate way.”

The claimant has not proved that she became incapacitated from earning a living by virtue of termination of her employment. Further, employment relationships are expected to be terminable upon compliance with the statutory and contractual procedure for termination and the law only provides for remedies for the unlawful or unfair termination, not of speculative future earnings. This is why every contract of service of necessity provides for a termination clause, and if none is provided, the provisions of the Employment Act relating to notice of termination of employment relationship will apply.

The prayer for salary for the remainder of the contractual term is thus not payable and is declined.

The claimant further prayed for salary for the months of October and November. The respondent did not adduce any evidence to prove that the claimant was paid for the said months. I thus award her the same at Kshs.60,000.

The claimant further prayed for 12 months' compensation. Having only worked for just over one year of the said contract, it is my opinion that three months' salary would be adequate compensation in the circumstances of her case and I award her the same at Kshs.90,000/=.

The claimant further prayed for gratuity. Her contract provided for the same at 31% of her salary. Having worked for 18 months, the gratuity would be $(30,000 \times 18 \times 31/100)$ Kshs.167,400 which I award her.

The claimant is also entitled to three months' notice as provided in her contract which I award her at Kshs.90,000/=.

Conclusion

I thus enter judgment for the claimant against the respondent in the total sum of Kshs.407,400/= as tabulated below –

1. Salary for October and November 2013 Kshs.60,000

2. 3 months compensation at gross salary Kshs.90,000

3. Gratuity for 18 months

$(30,000 \times 13 \times 31/100)$ Kshs.167,400

4. 3 months' notice Kshs.90,000

Total Kshs.407,400.00

The respondent shall pay claimant's costs of this suit and interest shall accrue at court rates from date of judgment.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 22ND DAY OF NOVEMBER 2019

MAUREEN ONYANGO

JUDGE