



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

CAUSE NO 2278 OF 2015

ROSELYNE KIUNGA RIUNGU.....CLAIMANT

VERSUS

AGRICULTURE AND CLIMATE

RISK ENTERPRISE..... RESPONDENT

J U D G E M E N T

1. The Claimant pleaded that she was employed by the respondent as an office administrator based in Nairobi with Limited travel to the field from 1st September, 2014 on a contract for two years. Her monthly salary was Kshs. 200,000/=.
2. While carrying out her duties diligently, the Claimant stated, she was surprised to receive a Show Cause letter which detailed alleged acts she supposedly did. She was asked to respond within 7 days which she did indicating she had actually informed her manager that she was stepping out of office however she did not explain the reasons since her line manager was having discussions with one Ferrimah Osioma. The Claimant further explained that given the nature of the job she may be required to be out of the office from time to time. The Claimant further apologized.
3. On 7th October, 2015 the Claimant was requested to attend a Show Cause meeting to discuss issues raised in the show cause letter and her response thereto to chart way forward.
4. The Claimant to her dismay received a termination letter on 21st October, 2015. According to the Claimant the Show Cause meeting was held
5. and it was expected that her relationship and engagement with her line manager would be alright. There was no indication that there was any offence that she was required to respond to at the Show Cause meeting.
6. The respondent pleaded that the Show Cause letter was not surprising at all as any issues related to Claimant performance at work was dealt with in the first instance by the line manager and in event there was no change in the employee then the issue would be escalated to be dealt with at a higher level.
7. According to the respondent, it was evident from the letter dated 1st October, 2015 that the acts of insubordination by the Claimant first occurred on 18th September, 2015 where the Claimant absented herself from work without any notification and communication to her line Manager.
8. It was also evident that on 29th September, 2015 during bi-weekly office meeting in gross defiance of the Line Manager and contemptives disregard for those and authority over, the Claimant turned her back to the Line Manager as he was speaking to the rest of the team and shut her eyes.
9. The respondent averred that prior to the Show Cause letter dated 1st October, 2015 the Line Manager attempted to deal with the breaches of contract by the Claimant however there was no change despite the verbal warnings to her. According to the respondent therefore, the Claimant termination arose from various acts of insubordination.
10. In her oral evidence in Court the Claimant repeated the averments in the statement of claim and further stated that she had worked for thirteen months by the time he got terminated. It was her evidence that she was in charge of office management dealings, Landlord and Caretaker and supplies. Some of her duties required her to be out of office from time to time. She had performance appraisals and according

to her, they were food. It was her evidence that she responded to the Show Cause letter immediately and to the three issues raised in it.

11. She proceeded on leave thereafter. She stated that she was invited to a Show Cause meeting which she attended and made her representations. When she returned from leave, she worked until 5.00 pm when she was called to the Boardroom on her way out and served with termination letter.

12. It was her evidence that all the time she stopped out she would ask her assistant to stand in for her and that she never received any complaint over anything going wrong during her absence. At the staff meeting she was the one taking minutes. If she turned her back she must have done so subconsciously. It was her evidence that she was undergoing menstrual cycle and that she closed her eyes due to pain she was going through.

13. In cross-examination she stated that her contract stated specific working hours and that she was accountable to the respondent for the working hours. It was her evidence that she did not have to report to her line manager when going out shortly and what she was going to do but she informed the Line Manager before she stepped out. On the particular occasion she found her Line Manager in the office with some people and told him she was going out shortly and when she got back, she gave him some receipts.

14. The respondent's witness Mr. Patrick Chebos stated he was an accountant and currently worked for the respondent as the head of finance. He said he knew the Claimant and that she joined the respondent before him and that initially she was not initially she was not reporting to him but later on she was. According to him there were issues that which required his attention. Staff members complained that the Claimant was a loaf, hard to work with and disrespectful. One of the directors expressed her dissatisfaction over the photo-shoot organized by the Claimant. It was his evidence that his relationship with the Claimant was cordial.

15. In cross-examination he stated that the Claimant was terminated five months after he had joined. Further no warning letter was issued on the occurrences and further that the complaint from the directors was not included in the Show Cause letter.

16. Proof or justification for reasons for termination of employment rest on the employer. The test usually is that of a reasonable employer. That is to say would a reasonable employer confronted with similar situation and facts consider termination of service as the most appropriate and proportionate remedy in the circumstances? If the answer is in the affirmative, the Court would not interfere.

17. As a rule, the Court would not normally interrogate a reason for termination where in the face of it, it looks reasonable. However, this does not prevent the Court from briefly putting itself in the same shoes as the employer to see if it were the one to decide the matter at that point, a termination would be the most appropriate remedy.

18. The Claimant herein was issued with a Show Cause letter dated 1st October, 2015. The letter accused her of two infractions. First, absence from office without informing her Line Manager. Second insubordination. That is, on 29th September, 2015 during a bi-weekly office meeting, she turned her back on her Line Manager and closed her eyes.

19. The Claimant in her response to the Show Cause letter stated that the nature of her work sometimes requires that she steps out briefly to meet clients and suppliers and whenever she has to do so she would inform her Line Manager. She did not know this was breaking any of the respondent's regulations in any event she apologized.

20. On the issue of turning her back to her Line Manager during staff meeting, the Claimant explained that she was undergoing menstrual cycle at that time and turning and closing her eyes was an expression of the pain she was feeling at that time.

21. The respondent talked of other allegations such as complaints by Claimants colleagues that she was aloof and difficult to work with and that one of the directors was not happy with the photoshoot the Claimant had done. None of these allegations was contained in the Show cause letter. The respondent's witness Mr. Chebos further stated that apart from the Show cause letter, there were no previous warnings over the allegations against the Claimant.

22. The Court is persuaded that the infractions by the Claimant were minor and that she reasonably explained herself out. Termination of her service was therefore disproportionate in the circumstances hence unfair.

23. The Court will therefore award the Claimant six months' salary being Kshs. 1,200,000/= as compensation for unfair termination of service. The Claimant in her termination letter was paid in lieu of notice and given other terminal benefits hence no order will be made in that respect.

24. The award shall be subject to taxes and statutory deductions but shall attract interest at Court rates until payment in full.

25. The Claimant shall further have costs of the suit.

26. It is so ordered.

Dated at Nairobi this 22nd day of November, 2019

Abuodha Jorum Nelson

Judge

Delivered this 22nd day of November, 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge