



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 850 OF 2015

SAMUEL PATRICK MUTHOMI.....CLAIMANT

VERSUS

PUBLIC SERVICE COMMISSION CABINET SECRETARY

MINISTRY OF INTERIOR AND COORDINATION.....1ST RESPONDENT

NATIONAL GOVERNMENT PRINCIPAL SECRETARY

MINISTRY OF INTERIOR AND COORDINATION.....2ND RESPONDENT

NATIONAL GOVERNMENT PUBLIC SERVICE COMMISSION....3RD RESPONDENT

THE ATTORNEY GENERAL.....4TH RESPONDENT

JUDGEMENT

1. The claimant pleaded that on 1st July, 2009 he was employed by the 1st respondent and deployed to serve as an Immigration Officer II in the passport section at Nyayo House. The claimant underwent training and was constantly rated among the best performing employees. While in the course of his work on 7th November, 2011 handled a client who presented himself as John Kimani Maathai who sought to apply for a passport. While handling the application the claimant pleaded that he followed procedure as required such as asking questions to the applicant which were answered in English. The claimant further verified the applicant's identity card, birth certificate and photos from Integrated Population Registration System (IPRS). These documents were consistent with those in the system.

2. The claimant after these verifications found the application by the applicant satisfactory. He therefore advised him to move to the next counter. The claimant therefore left the application to other processes including payment of application fee, photograph capture, verification of family file indexing and date entry, distribution for recommendation and approval, printing and delivery.

3. The claimant later after accusations were leveled against him while carrying in our investigations concerning the file, found out that it had been taken to the wrong approver by an unknown person and that the files had been approved at around 6pm which was after office hours. Soon thereafter the claimant was accused by the Director Immigration Services of misconduct, culpable negligence and assisting or expediting the file throughout the internal process.

4. The claimant wrote a letter responding to these accusations and detailing his case. The claimant was thereafter interdicted and asked to show cause why he should not be dismissed from employment. The claimant was subsequently dismissed by a letter dated 9th September, 201. The claimant appealed against the dismissal on 10th October, 2012 but the appeal was also dismissed.

5. The respondent on other had pleaded that the claimant accepted Mr John Kimani Mathias application after verifying the supporting documents and ascertaining that they were authentic but failed to conduct an oral interview on the applicant which was key component of passport processing procedure and would have revealed the applicant's nationality.

6. It was later established that the applicant's real name was John Chidi Aril and not John Kimani Mathai as was indicated in the passport application form national identity card and birth certificate but was a Nigerian National. It was further established that Mr Ani could neither speak English nor Kiswahili alone having assumed Kikuyu names.

7. On 27th February, 2012 Mr Ani was arrested by Immigration Officers at Jomo Kenyatta International Airport and charged in court for being in possession and fraudulently acquiring a Kenya passport and being in the country illegally.

8. As a consequence the claimant was called upon to show cause following recommendation of the name by the office of the Director of Immigration. The claimant was required to submit representations for consideration within 21 days failure to which disciplinary action would take place leading to summary dismissal from service. The claimant responded to the show cause letter and the same was considered by Ministerial Human Resource Committee which recommended that the claimant be dismissed. The decision was communicated to the claimant through a letter dated 9th September, 2012.

9. According to the respondent, the claimant was bound by Public Officers' Ethics act to maintain the integrity of the office and to be cautious at all times noting the mandate of the office with regard to the security of the country. The claimant was therefore dismissed for warranted reasons and was granted a fair hearing as he was granted a chance to make representation in accordance with Section 41 of the Employment Act.

10. In his oral evidence the claimant further stated that he was employed as a passport application receiving officer. According to him, three officers were involved in passport processing. The language used in the interview was a national language. He further stated that the application for passport does not start and end with him. There were back office procedures such as indexing, history of the applicant, scanning, data capture and recommendation for issuance of passport.

11. It was his evidence that he was informed of the criminal proceedings against the passport of the applicant. They recorded a statement. According to him, the approving officer was the senior most. He was a junior officer. He was the only one who was interdicted.

12. In cross-examination he stated that part of his duty was to check if the application has been filled as per instructions. The application requires as recommender who must be a Kenyan holding a passport. It was his evidence that he stated that he spoke to the applicant in Kiswahili later he said he spoke to him in both languages.

13. The respondent's witness Mr Benedict Maingi stated that he was the Director Human Resource at Immigration. He came to know about the matter through records kept by the respondent. The claimant was issued with a show cause letter to which he responded. It was his evidence that the claimant accepted the passport application form from a Nigerian without verifying if the applicant was Kenyan. This according to him was gross negligence.

14. In cross-examination he stated that he was aware of investigations but he however never came across the investigation report. He further stated that the claimant was dismissed on account of negligence. He did not follow procedure set for processing new passports. The claimant should have interrogated the passport applicant. Further the applicant ought to have vetted the documents and where necessary interview the person.

15. The respondent second witness Mr John Kimani Njoro stated that he was Assistant Director PSC and that he came to know about the claim in the course of his duties. According to him the PSC ensures discipline is controlled and decisions are lawful and fair. It was his evidence that the claimant's appeal was considered in April, 2013 however there was no record of second appeal.

16. In cross-examination he stated that the claimant was heard in accordance with procedure set down. The reason for which an employee is terminated from employment ought to be reasonable from the perception of a reasonable employer. The court will uphold the dismissal or termination if it is shown that the reasons warranted dismissal or termination as the most appropriate cause of action to take by the employer in the circumstances.

17. The claimant was terminated on account of the fact that he cleared a passport applicant for issuance of a passport without conducting oral interview of the applicant. The applicant whose documents were genuine documents issued by Kenya authorities was actually a Nigerian national. He was later on arrested while attempting to use the said passport.

18. In the passport application process, the person who gets into physical contact with the applicants is crucial to the process. Once he or she clears the application the rest of the people involved merely handle documents and may not be able to tell whether the person who presented the documents is the actual owner of the documents or not. It is not clear from the claimant whether he actually met the applicant. At one point he said he met and spoke with him in Kiswahili while at another he says he spoke to the applicant in both Kiswahili and English.

19. From the evidence on record it turned out that the alleged John Mathai who appeared before the claimant was an imposter by the name John Chidi Ani a Nigerian national who could not speak Kiswahili. The omission on the claimant's part was serious in nature since it led to a serious security document such as a passport ending up in wrong hands. This according to the court was a justifiable reason for dismissal.

20. Regarding the process the claimant was called upon to show cause and he responded in writing. It was fair enough and the fact that no oral hearing took place did not diminish the process.

21. The court therefore finds the case unmerited and is hereby dismissed with no order as to costs.

22. It is hereby 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