



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CASE NO. 343 OF 2016

(Before Hon. Justice Mathews N. Nduma)

RICHARD KERAMA RATEMO.....CLAIMANT

VERSUS

THE HON. RICHARD NYAGAKA TONGLI.....RESPONDENT

JUDGMENT

1. The claim was filed on 18th November 2016 against the Hon. Richard Nyagaka Tongi Member of Parliament for Kisii Town Nyaribari Chache Constituency.
2. The claimant testified that he was employed as a constituency office manager with effect from 1st February 2014. The claimant earned a monthly salary of Kshs.35,100.
3. The claimant testified that his employment was terminated in May 2015 without notice, notice to show cause or any valid reason.
4. The claimant was unable to directly serve the respondent with the summons and statement of claim and applied to serve the respondent by substituted service which was duly done.
5. The respondent did not enter appearance nor file a defence to the suit.
6. The suit remains undefended.
7. The claimant testified that he was simply blocked from accessing office without notice, notice to show cause, or any reason advanced by unnamed persons. The claimant testified that the summary dismissal was unlawful and unfair. The claimant further testified that he was employed on a five (5) year term which was due to expire in September 2017. The claimant stated he was entitled to 31% gratuity at the end of the contract in terms of The County Office Staff Regulations 2005.
8. The claimant prays for general damages for wrongful dismissal equivalent to the unserved term of the contract against the respondent.

Determination

9. The claimant only seeks general damages for the wrongful and unlawful dismissal equivalent to the unserved term of the contract in the statement of claim dated 15th November 2016 and filed on 18th November 2016. The claimant further seeks costs of the suit.

10. There is no claim for payment of gratuity and/or severance pay in the statement of claim.
11. The claimant purports to claim severance pay in the written submissions dated 20th May 2019. This is not one of the reliefs sought in the statement of claim.
12. The court finds that the claimant was employed as a constituency office manager Nyaribari Chache constituency.
13. The claimant did not demonstrate on a balance of probabilities that he was an employee of the respondent Member of Parliament.
14. In terms of Appendix 3 to the claim, the constituency office is an office set up by a member of parliament within the constituency he/she represents in accordance with Parliamentary Service (Constituency Officers) *Regulations 2005 as amended in 2011*. (*Legal Notice NO. 77) 2005*.
15. In terms of the said regulations and in particular *regulation 4.13 (iv)* any award by the court for unfair dismissal of any person engaged shall be borne by constituency office and shall be deducted by the Parliamentary Service Commission from the allocation of that particular constituency.
16. It follows that a member of parliament bears no personal liability with regard to remuneration, terminal benefits and/or damages due and owing to an employee or former employee of the constituency office. The office is clearly a public office and the respondent is wrongly sued in this matter in his personal capacity.
17. There is no evidence before court to establish that the Member of Parliament sued had anything to do with the summary dismissal of the claimant.
18. Accordingly, the claimant has failed to establish any cause of action against the respondent, Member of Parliament.
19. The suit lacks merit as against the respondent and is dismissed with no order as to costs

Judgment Dated, Signed and delivered this 4th day of November, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Begi for Claimant

Chrispo – Court Clerk