



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 727 OF 2015

KENNEDY MWITA MOHOCHI.....CLAIMANT

-VERSUS-

KEROCHE BREWERIES LIMITED..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 1st November, 2019)

JUDGMENT

The claimant filed a statement of claim on 30.04.2015 through Muhochi & Company Advocates. The claimant prayed for:

- a) A declaration that the summary dismissal of the claimant was unfair and unlawful.
- b) The respondent to pay the claimant Kshs.6, 198, 756.00 being:
 - i. Kshs.405, 608.00 pay in lieu of one month notice.
 - ii. Kshs.405, 608.00 salary for March 2015.
 - iii. Kshs.220, 244.00 outstanding reimbursements.
 - iv. Kshs.300, 000.00.
 - v. Kshs.4,867,296.00 12 months' salaries compensation for unfair termination.
- c) Costs of the cause.
- d) Interest.
- e) Any other relief the Honourable Court may deem fit and just.

The respondent filed the response to the claim on 26.02.2015 through Ndung'u Karanja & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs.

To answer the **1st issue** for determination the Court returns that there is no dispute that the parties were in a contract of employment. The claimant was employed as the Sales and Marketing Director by the agreement dated 29.09.2014 and effective 01.10.2014 on a 3 months' probationary service.

To answer the **2nd issue**, the claimant's employment was terminated by the letter dated 24.03.2015 effective the same date and on account of the claimant's business performance falling short of the respondent's expectations in regards to implementation of the desired marketing strategies to raise brand awareness and overall volume sales in the market. Thus the letter stated that the claimant was found unsuitable for the job and he'd be paid salary for March 2015, one month in lieu of notice, and 11 days accrued leave. He was henceforth not authorised to transact any business on behalf of the respondent.

The **3rd issue** for determination is whether the termination of contract was unfair. RW testified that the claimant was called in a meeting and told about his disobedience including alleged use of private funds and unjustified refund claims. He was told about engaging in alleged projects without prior disclosure of the activities. The evidence is that the claimant was terminated suddenly without a notice and a hearing on account of poor performance. Section 41 of the Employment Act, 2007 on notice and hearing was not complied with and the respondent

has not established that as at termination, the claimant had particulars of the alleged unsatisfactory performance as envisaged in section 43 of the Act. The evidence is that the claimant kept on complaining about belated provisions of necessary money to facilitate the field sales and marketing expenses. RW confirmed that there were no documented policies on the requisition of the funds. The Court considers that the claimant will not be faulted whereas the respondent's operational systems had not been properly instituted and conveyed to the claimant. The termination was unfair in procedure and merits.

The claimant had served for only 6 months and he had not contributed to his termination. He desired to continue in employment. In view of the short period served, in this case the Court returns that the one month pay in lieu of notice and which is not disputed should serve ends of justice and without a further award under section 49 of the Act. He is awarded the undisputed one month salary for March 2015 **Kshs. 405, 608.00; Kshs. 405, 608.00** pay in lieu of one month notice; and accrued leave at **Kshs. 300,000.00**. RW confirmed that there was no evidence of the payment and the money will be paid less tax. As submitted for the respondent, the claim on reimbursement will fail because the claimant did not produce evidence of the expenses that were allegedly incurred and subject of the petty cash requisition form. There is no reason to doubt that the cash bail receipt for Kshs.10, 000.00 was with respect to the claimant's private infraction of the traffic laws.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- a) The declaration that the termination of the claimant's contract of service by the respondent was unfair and wrongful.
- b) Payment of **Kshs.1, 111, 216.00** less due PAYE by 15.12.2019 failing interest to be payable thereon at Court rates from the date of filing the suit till full payment.
- c) Payment of the claimant's costs of the suit.

Signed, dated and delivered in court at **Nairobi** this **Friday, 1st November, 2019**.

BYRAM ONGAYA

JUDGE