

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE NO. 192 OF 2017

KELVIN NG'ANG'A MBURU.....CLAIMANT

VERSUS

ACACIA MEDICAL CENTRE LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant filed suit on 18th May 2017, seeking various reliefs against the Respondent his erstwhile employer. The Claimant averred that he was employed by the Respondent on 8th October 2015 as an Information Technologist to commence in January 2016 at a salary of Kshs. 40,000/-. He worked very hard and diligently despite the numerous challenges at the Respondent's branches in Nairobi CBD and Upperhill. He averred that his salary was not paid diligently at the end of each month but was often in arrears. He was given salary increases due to his performance and on 2nd February 2017 he was earning Kshs. 50,000/-. He averred that he was summarily dismissed on 3rd April 2017 for no genuine or valid reason. He stated that his terminal dues had been withheld by the Respondent and despite his demands for payment the Respondent had declined to pay. He thus sought Kshs. 74,172/- being his terminal dues, general damages for unfair termination, an order for issuance of certificate of service, costs of the suit, interest on the sums claimed as well as any other relief as the Court in its judgment deem fit and just to grant.

2. The Respondent filed a defence on 31st October 2017 in which it denied the Claimant's dismissal was unfair. It was averred that the Claimant was dismissed for not performing his duties and that he was summarily dismissed on 3rd April 2017 in accordance with the law. The Respondent averred that the Claimant failed to update the members list from the insurance companies. The Respondent denied the matter arose within the jurisdiction of this court stating that the matter arose in Nairobi which is not within the jurisdiction of this court. The Respondent thus urged the dismissal of the Claimant's suit with costs.

3. The hearing was set for 25th January 2018 whereat only the Claimant appeared and the same was deferred to 15th February 2018. He testified that he was an IT specialist. He stated that he was responsible for the mail server, network, internet connectivity and staff computers to ensure the systems ran well. He was also responsible for updates and that he worked at General Accident House and thereafter at the ICEA Branch. He stated that one of his machines was stolen and he had no work station. He testified that he was called and dismissed while at ICEA branch due to rejection of insurance. He stated that the rejection was on account of billing which he said was to be done by the reception. He testified that any invoice rejected would be sent to reception for correction and that he had no role in billing. He stated that no hearing was conducted and that he was asked for passwords and given a dismissal letter. He was never reprimanded verbally or even in writing and he always delivered. He stated that after they calculated his dues there was no payment and therefore he sought payment of his dues and the costs of the suit as well as damages.

4. The Claimant filed submissions on 1st March 2018 where he submitted that his dismissal was by all accounts unfair and relied on the case of **Bamburi Cement Limited v William Kilonzi [2016] eKLR** and **John Mati Lautani v Methodist Church in Kenya Registered Trustees [2016] eKLR** for the proposition that a hearing was necessary per Section 41 of the Employment Act 2007 for dismissal arising out of similar circumstances. The Claimant submitted that he was entitled to compensation under Section 49 of the Employment Act. He submitted that there was an amount of Kshs. 33,278/- paid at the time of filing suit and another sum of Kshs. 54,782/- paid in June 2017.

5. The Claimant was dismissed it would seem for the errors in billing. There was no proper explanation of his role in billing though he was the IT specialist for the Respondent. It would therefore be logical that he was involved in one way or the other with the process of billing through the systems he managed for the Respondent. Be that as it may, there is indication that he was summarily dismissed on 3rd April 2017. There is no letter of dismissal attached and therefore there is no indication as to the terms of the dismissal. In my view, there is insufficient material to find that there was an unfair dismissal. Summary dismissal is provided for under the Employment Act and therefore is a means by which the termination of employment may ensue. Regarding the payment of his terminal dues, the Respondent did indeed make payment in part. There was part payment of the terminal dues the balance of which as of the time of writing the judgment was a paltry Kshs. 19,390/-. The Claimant was entitled to payment and the sum that the court would find due to him is the 19,390/-. The Court will award costs which is set at Kshs. 25,000/- since the Respondent's debt to the Claimant is extremely low. The rest of the claims fail as indicated above.

It is so ordered.

Dated and delivered at Nyeri this 19th day of March 2018

Nzioki wa Makau

JUDGE