



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO 1340 OF 2010**

**BERNARD CHERUIYOT LANGAT.....CLAIMANT**

**VERSUS**

**KENYA RED CROSS SOCIETY.....RESPONDENT**

**JUDGEMENT**

1. By a memorandum of claim dated 26<sup>th</sup> October, 2010 the claimant averred that he was employed by the respondent on annual renewable contracts as Financial Planning and Budgeting Manager at a salary of Kshs 141,000/= per month which was later increased to Kshs 162,150/= by the time his services were terminated.
2. According to the claimant, while he was serving his renewal contract, his services were wrongfully terminated on 29<sup>th</sup> April, 2010 on the basis of malicious, baseless and unfounded allegations of leaking the organizations secrets to a media house. According to him, he was called by the respondent's Secretary General to his office at 5:25 pm and found him with the Deputy Secretary and Human Resource Manager. He complained that the Secretary General made various allegations against him and at about 6:30 pm he was intimidated and threatened with summary dismissal.
3. According to him, he was given only two options; either to resign or face summary dismissal. His plea to be given time to prepare his defence fell on deaf ears. The claimant as a result tendered his resignation. The claimant denied violating the employee code of conduct and engaging in any improper conduct. The claimant therefore claimed salary for the remainder of the contract and damages for wrongful dismissal.
4. The respondent on its part averred that the claim had no basis since the claimant voluntarily resigned from his position which was accepted by the respondent and the respondent paid him his terminal dues. The respondent further stated that after resignation, the claimant remained in communication with the respondent while pursuing his terminal dues which were eventually collected by his wife on his written authority. The respondent complained that at no time did the claimant give an indication that he was reconsidering his resignation or that he had rescinded the same on the grounds claimed.
5. The respondent further pleaded that the claimant had not worked for the period he was claiming to be paid hence it would be unjust enrichment to be paid for the period he had not worked.
6. In his oral evidence in court the claimant further stated that when he went to the respondent's Secretary General's office he was asked about an article in the Citizen Newspaper which claimed all was not well at the respondent's and that he was the one who supplied the information to the press. It was his evidence that he asked for the person from the press to be called to verify the allegations but this was not headed. According to him the whole issue was brought up to malign him.
7. According to him, he was pressured to resign and he did as it was the best way to deal with the matter. His resignation was accepted immediately. In cross-examination he stated that he did not include the events in his resignation letter and that the press report did not mention him. It was his evidence that he never raised the issue of coercion because he would not have been paid his terminal dues yet he needed money.
8. The respondent did not call any witnesses and instead opted to file submissions in which the respondent reiterated the averments in the defence. Clause 16.1 of the respondent's human resource policy provides as follows:

*“All contracts of employment provide employees with the opportunity to terminate their employment provided the employee gives KRCS the stipulated written notice period or pays salary in lieu of notice in accordance with the contract of employment. Such termination which is initiated by the employee is referred to as resignation”.*

Sub clause 2 of the manual provides:

*“the written resignation shall not become effective until the Secretary General has accepted such resignation in writing”.*

9. Further, the manual provides that the respondent reserved the right to require the employer to serve the notice period either in part or in full. The claimant resigned on 29<sup>th</sup> April, 2010 asking for waiver of the notice period. The resignation was accepted the same day and notice period waived. The claimant pleaded and testified in court over the circumstances leading to his resignation.

10. The respondent’s counsel cross-examined him on his testimony and pleadings and he maintained that he did not resign voluntarily. He further stated that he maintained communication with the respondent because he needed to be paid his terminal dues and that he never raised the issue of coercion in his resignation letter because he would not have been paid his dues.

11. These are serious allegations that required the respondent to call evidence to controvert and clarify. The respondent chose to rely on their memorandum of response and supporting documents. Averments in pleadings are untested factual claims which require to be subjected to cross-examination before they can be believed. They are not on their own, evidence. Failure or omission by the respondent to call witnesses to testify over the averments in the pleadings as well as controvert the claim by the claimant that his resignation was involuntary, left the court with the impression that it was more probable than not that the claimant involuntarily resigned as alleged.

12. Involuntary resignation is an unfair termination of employment within the meaning of section 45 of the employment Act. Since the claimant had been paid his other dues, the court will only award compensation for the remainder of the contract since the contract could have been terminated by either party for any lawful reason.

13. By the time the claimant resigned, his salary per month was Kshs 162,150/=. The court therefore awards him Kshs 972,900/= being six months salary as compensation for unfair termination of service. The claimant shall further have costs of the suit. The judgement sum shall be subject to taxes and statutory deductions.

14. It is so ordered.

**Dated at Nairobi this 20<sup>th</sup> day of July, 2018**

**ABUODHA J. N.**

**JUDGE**

**Delivered at Nairobi this 20<sup>th</sup> day of July, 2018**

**ABUODHA J. N.**

**JUDGE**

**In the presence of:-**

.....for the Claimant

.....for the Respondent