



REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1624 OF 2014

*(Before Hon. Lady Justice Maureen Onyango)*

**DENNIS KARANJA NGANGA.....CLAIMANT**

**VERSUS**

**TAPHE QUEST HOUSE.....RESPONDENT**

**JUDGMENT**

By an employment contract dated 1<sup>st</sup> December 2011 the claimant was engaged by the respondent, TAPHE Guest House and Resort, operating a hotel in Naivasha, as the Hotel Manager. The contract was for three years commencing 1<sup>st</sup> December 2011 and expiring on 31<sup>st</sup> December 2014.

According to the claimant's evidence he took leave from 21<sup>st</sup> to 27<sup>th</sup> February 2012. On the date he reported back to work he found Mr. Nyamwaya, a Director who he had not met before, holding a meeting with the staff. There was a disagreement between him and the Director which culminated in him being relieved of his duties following which he was denied access to the business premises.

The claimant instructed an advocate to send a demand letter to the respondent on 12<sup>th</sup> March 2012 seeking clarification on his employment status. In response the respondent's advocates sent him a letter of termination of employment accusing him of misrepresenting himself as an experienced hotelier which he was not and for engaging in fraudulent activities including signing cheques without authority, treating workers callously and incurring unauthorised expenditure, among other grounds of misconduct and mismanagement. The letter further accused him of abandoning the business on 22<sup>nd</sup> February 2012.

The claimant further testified that the respondent caused him to be arrested and charged in **Naivasha CMC Case No. 1013 of 2012** with the offence of **stealing by servant contrary to Section 281 of Penal Code** but he was acquitted of the charges.

By his memorandum of claim dated 10<sup>th</sup> September and filed on 17<sup>th</sup> September 2014 the claimant prays for the following remedies –

- a) A declaration that the claimant's employment services with the respondent were terminated wrongfully, maliciously and or unfairly.
- b) Payment of the claimant's salary for the month of February.
- c) Payment of the claimant's salary for 3 months in lieu of notice as stated in clause 12.4 of the employment contract, the amount being Kshs.90,000.00/= and all of the claimant's aggregate salary and other compensation he would have earned under this employment contract from the actual date of termination to the termination date set forth in this employment contract being Kshs.1,020,000.00/=.
- d) An award of Kshs.360,000.00/= being damages for wrongful termination maximum of 12 months.
- e) The respondent do issue the claimant certificate of service.
- f) Any other or further relief that the court may deem fit and just to grant.

The respondent filed a defence denying the allegations in the memorandum of claim. At the hearing MR. EZEKIEL NYAMWEYA KEBATI testified on behalf of the respondent. According to the respondent's evidence the claimant mismanaged the hotel occasioning great

losses and failed to respond to a letter from the respondent's counsel requiring him to absolve himself of the accusations against him.

### **Determination**

There is no dispute that there was a contract of employment between the claimant and the respondent which crumbled following disagreement between the claimant and a Director of the respondent that culminated in the claimant being charged with the offence of stealing by servant. It is not clear from the evidence on record who between the claimant and the respondent terminated the contract as the claimant accuses the respondent of having terminated his employment while the respondent accuses the claimant of abandoning his employment.

Section 47(5) of the Employment Act provides that –

**(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.**

It is therefore the burden of the claimant to prove that there was wrongful dismissal or unfair termination, a burden which he has not discharged. The result is that I find the claimant's allegations of wrongful and/or unfair termination of his contract of employment not proved.

### **Remedies**

The claimant prayed for payment of salary for February 2013. Going by the letter dated 27<sup>th</sup> March 2012 from the respondent's advocates and the evidence on record, the claimant was in employment until 27<sup>th</sup> February 2012. He is therefore entitled to salary up to that date. His salary was shs.30,000 per month. I award the same being salary for February 2012.

The claimant is not entitled to notice as he has failed to prove unfair termination of his employment. He is further not entitled to compensation for the same reason.

Having worked from 1<sup>st</sup> December 2011 to 27<sup>th</sup> February 2012, the claimant is entitled to a certificate of service.

### **Orders**

I therefore make the following orders

1. The claimant is awarded salary for February 2012 in the sum of Kshs.30,000.
2. The respondent is directed to issue a certificate of service to the claimant.
3. The rest of the claim is dismissed.
4. Each party will bear its costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 13<sup>TH</sup> DAY OF JULY 2018**

**MAUREEN ONYANGO**

**JUDGE**