



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 327 OF 2014**

*(Before Hon. Justice Mathews N. Nduma)*

**WILSON KITERE.....CLAIMANT**

**VERSUS**

**THE BOARD OF GOVERNORS**

**LUGULU MISSION HOSPITAL.....RESPONDENT**

**J U D G M E N T**

1. The Claimant seeks compensation for wrongful and unfair termination of employment and payment of other terminal benefits set out in the amended memorandum of claim filed on 4<sup>th</sup> August, 2016 as follows:-

- (i) Arrear Salary of Kshs.1,466,986 not paid during interdiction.
- (ii) Notice Pay.
- (iii) In lieu of leave.
- (iv) Certificate of Service.
- (v) Costs and interest.

2. Amended response to this claim was filed on 22<sup>nd</sup> December, 2016.

3. The Respondent states the Claimant's employment was terminated by the Board of Management for misconduct and was entitled to payment in lieu of one month salary and to vacate the hospital house. That the Respondent followed fair procedure to effect the termination.

4. That the Claimant was warned by the Respondent and his salary was Kshs.49,000 per month without housing allowance.

5. The Respondent denies it owes the Claimant any arrear salary.

6. That the Claimant had received warning letters and was hence suspended, disciplined and his employment terminated for misconduct and insubordination.

**Evidence**

7. The Claimant testified in support of his case under oath. He said he was employed on 15<sup>th</sup> July, 2011. He was Director of Administration and Personnel. That his gross salary was Kshs.63,782, made up of basic salary of Kshs.49,000 plus house and responsibility allowance of Kshs.5,000 and 6,000 respectively.

8. That he served the Respondent diligently until some adverse articles were published in the citizen weekly newspaper about the hospital. The Board of Management in its meeting of 25<sup>th</sup> May, 2012 insinuated that the adverse reports came from within. There was no evidence that the Claimant was the author of the information. The Claimant was given a warning letter dated 28<sup>th</sup> May, 2012. The claimant protested the decision of the board since he had not been given opportunity to defend himself.

9. On the morning of 20<sup>th</sup> August, 2012, the Claimant was called to a Board meeting by the Chairman of the Board. The conduct of the Claimant was discussed in the Board. The Claimant had no notice of that Agenda. At the meeting the Provincial Director of Medical Services informed the Board that the Claimant had raised in a Christian-Health Association of Kenya (CHAK) meeting concerns above the Claimant's relationship with Dr. Kisaka. The Claimant explained at the meeting that he had simply responded to a query by a Senior Nurse concerning the negative publication against the hospital.

10. The Board made a decision to terminate the employment of the Claimant before the expiry of his contract period.

11. The Claimant stated that the allegations made against him, were false and the termination was wrongful and unfair. The Claimant had been employed on a fixed term three (3) years contract. The contract was renewable.

12. The Claimant was entitled to medical care for himself and family.

13. The Claimant prayed that he be awarded as per amended claim.

14. The Respondent did not call any witness to testify in support of its case.

15. The Respondent had sought adjournment of the case on 7<sup>th</sup> December, 2017 and the same was adjourned to 5<sup>th</sup> March, 2018 for defence hearing. The Claimant had closed his case on 18<sup>th</sup> September, 2017.

16. On 15<sup>th</sup> March, 2018, the Respondent did not turn up at the hearing with no explanation at all. Mr. Ocharo for the Claimant applied for closure of the defence case, which application was granted. The claimant proceeded to file written submission and thereafter.

### **Determination**

17. The issues for determination are:-

(i) Whether the termination of employment of the Claimant was for a lawful reason and in terms of a fair procedure.

(ii) Whether the claimant is entitled to the reliefs sought.

### **Issue I**

18. The version told by the Claimant went uncontroverted. The Claimant narrated how he was ambushed with unfounded allegations of giving the hospital bad publicity. The claimant explained that he was not the source of any bad publicity against the hospital and had not insubordinated his superiors.

19. No evidence of any misconduct was tendered by the Respondent.

20. The Claimants version of events was consistent and credible. He was unfairly accused by the Board and hurriedly had his employment terminated without following any due process. The court finds that the termination of the employment of the Claimant was not for a valid reason and was not effected in terms of a fair procedure. The Respondent violated sections 41, 43 and 45 of the Employment Act, 2007. The Court so finds.

### **Issue II**

21. The Claimant is entitled to compensation in terms of section 49(1)© as read with sub-section 49(4) of the Employment Act, 2007 due to the unlawful and unfair termination of his employment. The claimant was not paid in lieu of notice and was not paid terminal benefits or compensation upon termination of his employment. The claimant was still to serve about two (2) years of the fixed term contract at the time of termination. The Claimant did not seek reinstatement to his job. The court finds that the Claimant did not contribute to the termination but was falsely accused by the board and hounded out of his job. The claimant suffered loss and damage.

22. Considering all the circumstances of the case, and having regard to similar cases including -

(i) **Kenfreight (E.A) Limited Vs. Benson K. Nguti, [2016] eKLR** in which the Court of Appeal confirmed compensation for unlawful and unfair termination of employment of the equivalent of 12 months salary.

23. The court awards the claimant ten (10) months salary in compensation for the unfair and unlawful loss of employment.

24. In terms of the letter of appointment, the Claimant has a basic salary of Kshs.49,000, house allowance of Kshs.5,000 and responsibility allowance of Kshs.6,000.

25. The Respondent in its pleading stated that the Claimant was housed by the hospital. We have no evidence to the contrary. The court finds that the Claimants gross salary was Kshs.55,000. Total compensation is therefore Kshs.550,000.

### **Terminal Benefits**

**(a) Notice Pay**

26. The Claimant is entitled to one month salary in lieu of notice Kshs.55,000.

**(b) Arrear Salary**

The Claimant was owed Kshs.11,381 arrear salary in the month of August 2012 and same is awarded.

In the final analysis judgment is entered in favour of the Claimant as against the Respondent as follows:-

(i) Kshs.550,000 being 10 months salary in compensation.

(ii) Kshs.55,000 in lieu of notice.

(iii) Kshs.11,381 arrear salary for August, 2012.

Total award Kshs,616,381

(iv) And is payable with interest at court rates from date of filing suit in respect of (ii) and (iii) above and from date of judgment in respect of (i) above till payment in full.

**Dated and Signed in Kisumu this 12th day of July, 2018**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Ocharo for Claimant

Mr. Sifuna for Respondent

Chrispo – Court Clerk