



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 188 OF 2015

(Before Hon. Justice Hellen S. Wasilwa on 9th July, 2018)

JOASH NGAIRA MUNDIA CLAIMANT

VERSUS

UWEZA FOUNDATION

JEN SAPITRO

WILIAM OTIENO MOI (Sued on their own capacity and as

Representatives and managing director and county director of

Uweza foundation).....RESPONDENT

JUDGEMENT

1. The Claimant filed his claim on 16/2/2015 through Nyende & Company Advocates claiming unfair and unlawful termination of his employment and compensation and damages for the unfair termination.
2. It is the Claimant's case that he was employed by the Respondent as a Football Coach and Coordinator at Uweza Soccer Academy run by the Respondents. He avers that he worked for the Respondent on a yearly renewable contract and served for 5 years. His basic salary was 14,500/= and his last contract was executed in July 2014 and was to end in July 2015.
3. However, on 29.1.2015, one William Otieno Moi sent him a message summoning the Claimant to the Respondent's offices. On arrival, the Claimant was issued with a termination letter dated 30/1/2015. The letter indicated the reasons for termination as refusal to cooperate and communicate with his immediate supervisor an act of insubordination and contrary to Section 3.13 of the Human Resource Policy.
4. It is the Claimant's evidence that the letter made reference to a previous incident in November 2014 where the Claimant had been suspended without pay for 1 month and thereafter after presentation, he was asked to resume duty.
5. The Claimant avers that his hopes of mitigating his case and pursuing an appeal against the dismissal was frustrated arrogantly by one William Otieno Moi. The Claimant avers that he was threatened and forced to sign a discharge voucher and ordered to collect his final dues or risk "losing everything" in the words of Moi. The Claimant collected his dues on 2/2/2015 being the January salary.
6. It is the Claimant's case that the dismissal of 30/1/2015 was made in bad faith and maliciously by William Otieno and that he suffered loss.
7. He seeks payment of 12 months salary as compensation, service gratuity for 5 years, exemplary and aggravated damages for breach, issuance of a certificate of service and any other damages and relief as this Court deems suitable in the circumstances.
8. He also seeks costs of this suit.
9. The Claimant exhibited his letter of contract which indicates his job description, the wages payable and the process of termination of employment.

10. Section 16.1 of the contract indicated how the contract could be terminated.

11. Section 15.1.4 indicated that the contract could be terminated: “when the employee has been given two consecutive warning letters as a result of misconduct of any kind” and the Claimant contends that he had an assault case in October 2014 which was heard and he was suspended for 1 month. On 1/12/2014, he returned to work so he had only one previous warning and the issue of November 2014 was not related to the termination.

12. He avers that he was not given any opportunity to be heard.

13. The Respondents filed their defence on 16/9/2015 through the firm of Odero and Associates. He averred that the Managing Director and County Director were wrongfully sued in their personal capacities as they act for the organization. They also denied the Claimant’s case and allegations.

14. They aver that the Claimant was involved in misconduct in November 2014 and issued with a warning letter. He was also suspended but in January 2015, he refused again to cooperate and communicate with his supervisor and this is what led to the termination.

15. In cross-examination, the RW1 admitted that there was no disciplinary hearing before the termination. He also admits that the termination letter did not have particulars of the non-corporation.

16. This Court has considered the evidence of the parties plus their submissions.

17. From the evidence, it emerges that the Claimant was terminated without the two warnings required before termination. The RW1 also admitted that he was not subjected to any disciplinary hearing before the termination.

18. The reasons also given for the termination were not explained. The Respondent indeed terminated the Claimant without the laid down procedure as envisaged under Section 45(2) of Employment Act 2007 which states as follows:-

2. “A termination of employment by an employer is unfair if the employer fails to prove:

a. that the reason for the termination is valid;

b. that the reason for the termination is a fair reason:-

i. related to the employee’s conduct, capacity or compatibility; or

ii. based on the operational requirements of the employer; and

c. that the employment was terminated in accordance with fair procedure”.

19. I therefore find the termination unfair and unjustified.

20. In terms of remedies, I find for the Claimant and award him as follows:-

1. 1 month salary in lieu of notice = 14,500/=.

2. 6 months salary for the remainder of the contract period = 14,500 x 6 = 87,000/=.

3. 3 months salary as damages for unfair termination = 3 x 14,500/= 43,500/=.

TOTAL = 145,000/=

4. Claimant to be issued with a Certificate of Service.

5. The Respondent will pay costs of this suit plus interest at Court rates with effect from the date of this judgment.

Dated and delivered in open Court this 9th day of July, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Owiti holding brief for Miss Odero for Respondent – Present

