



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 332 OF 2015

(Before Hon. Justice Mathews N. Nduma)

JUDITH AUMA OMANGA CLAIMANT

VERSUS

THE HON. ATTORNEY GENERAL RESPONDENT

J U D G M E N T

1. The suit commenced vide Memorandum of Claim on 8th September, 2015. The Claimant seek reinstatement to her job without loss of benefits and in the alternative compensation and payment in lieu of notice for unlawful summary dismissal by the Respondent. The Claimant seeks interest and costs of the suit.
2. The Respondent filed a reply to the Memorandum of Claim on 24th February, 2016 in which the particulars of claim are denied in totality and the Claimant put to strict proof thereof.
3. The Claimant relied on list of documents attached to the Memorandum of Claim whereas the Respondent filed a list of documents marked '1' to '14' on 15th March, 2018.
4. The Claimant testified under oath and the Respondent called RW 1 Mwende Mutuku, Senior Clerk in the Directorate of Immigration and Registration of Persons in charge of the disciplinary section. The Claimant and RW 1 adopted their witness statements filed before court as part of their evidence in chief and were then cross examined by respective counsel for the parties. The list of documents were admitted as exhibits as marked and the witnesses relied on them in their respective testimony.
5. Both parties filed final submissions in support of their respective cases.

Determination

6. The issues for determination are:-

- (I) Whether the Claimant was summarily dismissed for a valid reason and in terms of a fair procedure.
- (II) Whether the Claimant is entitled to the relief's sought.

Issue I

7. The particulars of employment of the Claimant as a Clerical Officer from September 2010 to 9th January, 2013 in the immigration department in Kisumu is not in dispute.
8. It is not in dispute that an Audit was conducted at the Kisumu Office where the Claimant worked by the Kenya National Audit office and random sample of about 460 passport applications filed for the period January 2010 to September 2012 were examined and a comparative analysis of the Duplicate and Triplicate copies of official receipts for the payments made by the passport applicants was undertaken.
9. The Audit revealed that whereas one applied for a Kenya passport for Kshs.4,540, a duplicate copy of an official receipt showed this amount whereas the Triplicate and Quadruplicate copy would only reflect Kshs.940 for example. This manipulation of official receipts in the Kisumu Office led to loss of Government revenue in the Kisumu office for the period in the sum of Kshs.296,860. The loss was attributed to deliberate conduct of the officers responsible of doing this work, and inadequate internal controls. Computerization of the revenue collection was recommended.

10. Following the audit, the Claimant was interdicted from office and charged with gross misconduct and misappropriation of public funds during the period 15th May, 2010 to 15th April, 2011 in the sum of Kshs.296,860 as a result of manipulating accounting records. The Claimant was charged together with her colleague in the said office Mr. David Onyango Odhiambo.

11. The two were arraigned in the Chief Magistrate's Court No. 741 of 2012 with the offences of theft by servant but the prosecution failed to bring any witnesses to court and the two were acquitted and discharged on 27th November, 2013 under section 206(1) of the Criminal Procedure Court for no case to answer.

12. The Claimant had responded to the disciplinary charges on 20th January, 2014. Following the acquittal, the disciplinary charges of misconduct and misappropriation of public funds were withdrawn and substituted with the charges of gross misconduct and negligence of duty. The Claimant was required to respond to the charges which she did in writing on 21st May, 2014. The response was produced in court.

13. In the said response, the Claimant outlined her responsibilities to include:-

(i) To accept payment and issue receipts to the members of public seeking various services of immigration department on behalf of government.

(ii) To ensure safe custody of the revenue collected before it is surrendered to the accountant at the end of each day.

(iii) To surrender the revenue accompanied by a summary schedule of all receipts to the accountant in charge at the end of each day's work.

(iv) To bank the revenue collected as may be delegated in the absence of the accountant, inter alia.

14. The Claimant made a bare denial of the charges of misconduct and negligence and never attempted at all to explain the loss of Kshs.296,860 under her watch.

15. The Respondent held a disciplinary hearing on 12th March 2014, 11th June 2014 and 8th October 2014. The committee found the explanation given by the Claimant inadequate, noted that she had been acquitted of criminal charges on technicality and found her guilty of gross misconduct and negligence and recommended her dismissal from service on account of loss of public funds. The Claimant received a letter of dismissal on 10th December, 2014.

16. The dismissal was backdated to 9th January 2013, the date she was interdicted. She had been on half salary during the period of interdiction.

17. The court finds that the Claimant had failed to prove her case on a balance of probabilities. The Respondent had discharged the onus placed on an employer under sections 41, 43, 45 and 47(5) of the Employment Act. It is the court's finding that the dismissal of the Claimant from service was for a valid reason. The dismissal was effected following a fair procedure.

18. The suit lacks merit and is dismissed. The Respondent is the government of Kenya. The Claimant is no longer employed. The court finds this appropriate case for each party to bear their cost of the suit.

Judgment Dated, Signed and delivered this 25th day of October, 2018

Mathews N. Nduma

Judge

Appearances

Otieno, Yogo, Ojuro for the Claimant

M/s. Aliongo for Respondent

Chrispo – Court Clerk