



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 379 OF 2016

(FORMERLY NAIROBI E & LRC CAUSE NO. 2376 OF 2016)

(Before Hon. Justice Mathews N. Nduma)

SHEM OMBATI OTACHI.....CLAIMANT

VERSUS

THE HON. ATTORNEY GENERAL

(Sued on behalf of the

Ministry of Interior and Coordination of National Government).....RESPONDENT

J U D G M E N T

1. The suit was initially filed on 23rd November, 2016. An Amended Statement of Claim was filed on 1st February, 2017. The Claimant seeks -

- a) Reinstatement to his job as the area chief for Ikuruma Location, Marani Sub-County, Kisii County with no loss of status and benefits.
- b) The Respondent be compelled to pay the Claimant his monthly salary for the period 20th December, 2013 to 11th August, 2015 at the rate of Kshs.19,323 per month plus accrued allowances.
- c) Costs of the suit.

2. The suit is supported by facts set out in the amended statement of claim, witness statement dated 23rd November, 2016, Documents produced before court and oral testimony by the Claimant under oath.

3. The suit is undefended. The Respondent was served with the statement of claim, amended statement of claim and summons to enter appearance but did not enter appearance nor file any statement of defence. Mr. Que, State counsel appeared on the date of hearing but did not participate in the hearing having filed no documents in defence of the suit. The following facts have been proved by the Claimant on a balance of probabilities:-

- That he was employed by the Respondent, Ministry of Interior and Co-ordination of National Government as the area chief for Ikuruma Location, Marani Sub-County, Kisii County with effect from 20th December, 2013.
- The position had been advertised where upon the Claimant applied, was shortlisted, interviewed and recruited at a monthly salary of Kshs.19,323. The Claimant reported to work on 20th December, 2013 and worked continuously until 11th August, 2015 when his services were terminated with effect from 27th May, 2015 on allegations that the Claimant had forged his KCSE certificate upon which he had relied for recruitment.
- The Claimant was subsequently charged before the Chief Magistrate's Court at Kibera in Criminal Case Number 504 of 2016. The Criminal case was withdrawn under section 87(a) of the Criminal Procedure Code and the Claimant was discharged on 28th September, 2016.

4. This court during the hearing directed the Kenya National Examination Council to confirm the examination results for the Claimant.

5. By a letter dated 20th September, 2017, the council provided 1992, KCSE examination results for one Otachi Shem, who had registered and sat for 1992 KCSE examinations at Itibo Boys High School under Index Number 73111081. The council provided the grades attained by the said candidate. The candidate had mean grade C⁺.

6. The council also stated it had original certificate presented to them by the Claimant Mr. Otachi Shem which was in their custody and had been tampered with.

7. From the evidence before court which is uncontroverted, the Claimant Shem Ombati Otachi, had not forged his KCSE qualifications and was properly recruited to the position of Chief for Ikuruma Location within Ngenyi Division, Marani Sub-County in Kisii.

8. No proper disciplinary proceedings were held by the Respondent before terminating his employment.

9. The court is satisfied that there was no lawful basis to terminate the employment of the Claimant.

10. The Claimant has suffered loss and damage as a result of the unlawful termination of employment in violation of sections 41, 43 and 45 of the Employment Act, 2007. The Claimant did not contribute at all to the unlawful termination. The Claimant wished to be reinstated to his job in terms of section 12 of the Employment and Labour Relations Court Act, Cap 234, B Laws of Kenya as read with section 49(2) and (4) of the Employment Act.

11. The Claimant was not paid terminal benefits upon termination. The Respondent has not provided any evidence that could be a hindrance to the reinstatement of the Claimant.

12. The court enters judgment in favour of the Claimant as against the Respondent as follows:-

a) The Respondent is directed to reinstate the Claimant to the position of Chief for Ikuruma Location, Ngenyi Division, Marani Sub-County, Kisii County or be re-engaged to any equivalent position without loss of status, salary, allowances and other benefits from the date of the unlawful termination.

b) The Respondent is directed to pay the claimant his arrear salary for the period 20th December, 2013 to 11th August 2015, in respect of which he had already provided service but was not paid at the rate of Kshs.19,323 per month and other accrued allowances.

c) The Respondent to pay costs of the suit.

d) Interest was not prayed for and none is awarded.

e) Letter dated 26th September, 2017 from Kenya National Examination Council be given to the Claimant and certified copy be retained in the file.

f) Computation and payment of arrear salary and the reinstatement be done within 60 days of this judgment.

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

Mathews N. Nduma

Judge

Appearances

Mr. Mokaya for the Claimant

Mr. Que for the Respondent

Chrispo – Court Clerk