



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO 2112 OF 2014

CHRISTINE OKOKO CHACHA.....CLAIMANT

VERSUS

GREEN BELT MOVEMENT.....RESPONDENT

JUDGEMENT

1. By a memorandum of claim filed on 25th November, 2014 the claimant averred that she was employed by the respondent on 1st November, 2012 as the Finance and Administration Manager. By a letter dated 6th January, 2014 the respondent wrote to the claimant declaring her position redundant and agreed to pay her Kshs 125,000/= in instalments. This amount remained unpaid by the time of filing the claim. By another contract effective 10th February, 2014, the claimant was re-engaged again for the position of Finance Manager. On 14th July, 2014 the claimant resigned and gave three months' notice period as provided in the contract. The notice lapsed on 13th October, 2014.
2. The claimant further stated that the respondent received her resignation letter and responded on 15th July, 2014 advising her to stay away from duty during the period unless specifically requested to attend work in order to allow for independent assessment of disturbing issues raised by the respondent's auditors. By a letter dated 7th August, 2014 the claimant requested for a copy of the alleged disturbing reports and the details of errors in the bank account to allow her peruse and comment but was never furnished with the same. The claimant therefore claimed for redundancy settlement, salary for August and September, 2014 and salary for 13 days worked in October, 2014.
3. The respondent filed a memorandum of response in which the respondent denied that the claimant was ever declared redundant neither was she to be paid by instalments. According to the respondent the claimants employed was never severed and that she continued to receive her normal salary. Concerning the resignation the respondent averred that it accepted the claimant's resignation and further that the claimant was to receive her monthly salary subject to fulfilling the agreed conditions which were laid out in the letter of acceptance.
4. According to the respondent the claimant failed to honour the agreement as she neither presented herself to work when called to do so nor surrendered all the documents as required. The respondent pleaded therefore that the failure of the claimant to undertake her duties cost the respondent financial loss including a grant. The respondent further pleaded that it had to hire someone to do the work that was left uncompleted by the claimant.
5. In her oral evidence the claimant further stated that her first contract was for three years but was terminated in mid second year when the respondent declared her redundant. According to her, she was to be paid ½ months' salary for each complete year of service and that the payment was to be in instalments. This payment was never made. After redundancy, she was issued with another contract and appointed Finance Manager. Her earnings remained the same.
6. The contract was to run for 2 ½ years subject to renewal. It was her evidence that she did not serve the full contract but instead assigned. She gave three months notice of resignation which was accepted by the respondent and asked to serve the notice period from home. According to her, the respondent only paid her for July. It was further her evidence that she was not aware that she was under investigations and never furnished with details of the alleged disturbing reports from auditors and banks.
7. The claimant denied stopping to work and stated that she availed herself to the respondent and could be reached on phone. She further stated that she did not go back to work upon being called by the Board Treasurer because her line manager refused to communicate with her.
8. The respondent's witness Ms Ivy Vertistin Mbaya stated that in 2014 the claimant resigned but was requested to continue working with her to finish certain transactions but the claimant never showed up in the month of August and that the claimant never reported to the office whenever requested. Further that the respondent offered to pay the claimant for the month of August but the claimant never went for her money. Ms Mbaya further testified that the redundancy process did not proceed as the respondent received funding and offered the claimant a new contract with no change in salary.

9. In cross-examination she stated that the claimant had a contract from 2012 for 3 years but the claimant did not serve for three years because the contract ended on redundancy. It was further her testimony that the respondent disclosed to the claimant, the disturbing reports. She further stated that she did not have a letter calling the claimant back to work.

10. The claimant herein was employed for the first time by the respondent on 1st November, 2012 for a period of three years which could have terminated on or about 1st November, 2015. This did not happen as vide a letter dated 6th January, 2014 the respondent terminated the same effective 6th January, 2014 on grounds that there was reduction in funding. The respondent proceeded and offered the claimant a redundancy settlement in the sum of Kshs 125,000/= to be paid in instalments. This amount was to be in full and final settlement of all claims arising out of the redundancy.

11. The respondent has not paid this amount to the claimant and has not provided any reason for not doing so. The court therefore enters judgement for this amount.

12. By a letter dated 11th February, 2014 the respondent offered the claimant a new contract for the position of Finance manager with effect from 10th February, 2014. The contract duration was for approximately two and a half years renewable. However, by a letter dated 14th July, 2014, the claimant resigned citing non-supportive work environment. She gave three months' notice intending to leave the respondent by 13th October, 2014.

13. The resignation was acknowledged and accepted by the respondent. The claimant was however informed that following disturbing reports received from the auditors, as well as information pertaining to errors in the respondent's accounts, she was asked not to attend work during the period of her notice of resignation unless specifically requested to do so in order to allow for independent assessment of issues raised by the auditors and banks. The respondent further in the said letter informed the claimant that she would continue to be paid as normal and remain subject to terms and conditions of employment.

14. By a letter dated 7th August, 2014 the claimant sought to be furnished with a copy of the disturbing reports received from auditors and details of errors in the bank accounts but as stated in her evidence in court which was never contradicted by the respondent, the claimant was never furnished with copies. Here again, the respondent failed to furnish any reason why they did not pay the claimant her dues upon her resignation. On the claim that she failed to report to work when called upon, no evidence was tendered to show any such attempt was made and the claimant refused or ignored to oblige.

15. The court therefore enters judgement as well against the respondent for the unpaid balance of the claimant's salary for August, September and two weeks in October, 2014.

16. In conclusion the court enters judgement against the respondent as follows:

Kshs

- | | |
|---|----------------|
| a. Agreed redundancy settlement | 125,000 |
| b. Two and a half months salary unpaid 2014 | <u>511,700</u> |

636,700

c. Costs of the suit

d. Items (a) and (b) shall be subject to taxes and statutory deductions.

17. It is so ordered.

Dated at Nairobi this 12th day of October, 2018

Abuodha Jorum Nelson

Judge

Delivered this 12th day of October, 2018

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.