



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 199 OF 2015

(FORMERLY NAIROBI CAUSE NO. 1004 OF 2014)

(Before Hon. Justice Mathews N. Nduma)

JOB KENYANYA OKEMWA.....CLAIMANT

VERSUS

THE PUBLIC SERVICE COMMISSION.....RESPONDENT

J U D G M E N T

1. The Claimant was retired from service in the public interest following a disciplinary meeting by the Ministerial Human Resource Management Advisory Committee held on 28th August, 2012. The authorized officer approved the retirement in public interest on 31st August, 2012.

2. The Claimant vide a letter dated 3rd October, 2012 accepted the retirement in public interest on 3rd October, 2012. The public service commission rejected the retirement of the claimant and dismissed him from service by a letter dated 20th May, 2013. A review application was rejected by a letter dated 23rd November, 2013.

3. The Claimant filed suit on 17th June, 2014 seeking a declaration that the purported dismissal of the Claimant was unconstitutional, invalid, null and void and that the rights of the claimant to a fair hearing were violated by the Respondent.

4. The Claimant seeks General Damages from the wrongful dismissal and lost income and violation of his rights. The Claimant also prays for costs and interest of the suit through J. Okerosi Ochako advocates.

5. The claim is opposed vide a Memorandum of Reply in which the Respondent the Claimant was lawfully retired from service in public interest following indictment and disciplinary hearing conducted against him for engaging in corrupt practices whilst working in the Registration office at Kisii in the capacity of a District, Civil Registrar.

6. That the corrupt activities were investigated by officers from the Ethics and Anti-corruption commission vide sting operations in which officers applied for birth certificates and were made to pay bribes upon being referred by the registry officials to a Mashauri cafe to buy application forms.

7. The Respondent states that due process was followed in disciplining and retiring the Claimant and subsequent dismissal. The claim has no merit and it be dismissed with costs. The Respondent was represented by Janet Langat, Principal Litigation counsel Attorney General's Office.

Determination

8. The issues for determination are:-

- (i) Whether the Claimant was dismissed from employment for a valid reason and in terms of a fair procedure.
- (ii) Whether the Claimant is entitled to the reliefs sought.

Issue i

9. In terms of section 107, 108 and 109 of the Evidence Act, Cap 80 Laws of Kenya, a Claimant or Plaintiff has the primary onus of proving his/her case on a balance of probabilities. In other words, a person who would lose if no evidence was tendered at all bears the onus to adduce evidence establishing his/her case. The Respondent only bears onus of rebuttal, once sufficient evidence tending to prove the case has been adduced by the Plaintiff.

10. In the present case, the Claimant filed a Memorandum of claim with a list of documents on 17th June, 2014.

11. From the said list of documents, it is apparent that the Claimant was indicted for misconduct and interdicted by a letter dated 7th February, 2012. He responded to the charges by a letter dated 17th February, 2012 detailing his defence to the charges. By a letter dated 13th September 2013, the Claimant received a letter retiring him from service in the public interest.

12. By a letter dated 31st October, 2012 the Claimant informed the authorized officer that he had read the letter dated 13th September, 2012 and 3rd October, 2012 and having considered the accusations made against him and the defence he had put against the charges, he stated:-

“Hereby Agree to the offer of the proposed retirement in line with the said Pension Act.”

13. However by a letter dated 20th March, 2013 the Public Service Commission rejected the recommendation that the Claimant be retired from the service in the public interest; and dismissed the Claimant from service with effect from 3rd October, 2011 on account of gross misconduct for participating in the illegal issuance of birth certificates at a facilitation fees of Kshs.2,000.

14. The Claimant applied for review of the decision to dismiss him from service and the application for review was dismissed by public service commission and the decision was communicated to the Claimant by a letter dated 25th November, 2013.

15. The Claimant did not tender any oral evidence in this matter. No witness statement was adopted in this matter as testimony by the Claimant.

16. The Claimant has failed to tender any evidence to impeach the charges and disciplinary process taken against him.

17. Accordingly, the Claimant was dismissed from service for a valid reason and in terms of a fair procedure. There is no prove of any violation of constitutional or statutory rights against the Claimant. The rampant vice of corruption has for a long time become the obstacle to proper public service to the people of Kenya. This has greatly hampered rapid social economic development of this country and condemned many Kenyans to untold injustices and poverty. The action taken against the Claimant was appropriate and a good deterrent to those who would want to follow that path of disservice to this nation.

18. Accordingly, the entire suit is dismissed. The second issue is therefore disposed of as no damages are payable to the Claimant.

19. In the final analysis, the suit is dismissed in its entirety with no order as to costs.

Judgment Dated, Signed and delivered this 4th day of October ,2018

Mathews N. Nduma

Judge

Appearances

Mr. J. Okerosi Ochako for Claimant

M/s Janet Langat, Principal Litigation Counsel

Chrispo – Court Clerk