



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO.1028 OF 2013

PETER NCHOROKO MARERI.....CLAIMANT

- VERSUS -

MANCHESTER OUTFITTERS LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 2nd November, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 08.07.2013 through Mose Nyambega & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) Special damages in terms of salary and allowances for 13 years in the sum of Kshs.8, 580, 000.00.
- b) General damages for unlawful, arbitrary and unjust termination and for loss of salary increments and benefits germane to the said employment.
- c) Costs of the claim.

The claimant's case is that by the letter dated 01.03.2012 the respondent employed him as a credit controller effective 01.03.2012. By the letter dated 15.02.2013 the respondent conveyed to the claimant that his services were no longer required and hence he was terminated with immediate effect. He was to collect his final dues from the accountant. The claimant's case is that the termination was capricious, callous and unlawful because the respondent thereby imperilled the claimant's chances of getting alternative employment as a professional accountant. Further, as at termination he was 47 years of age, he earned 55, 000.00 per month and his retirement age was 60 years so that he was entitled to cumulative gross salaries of Kshs. 8, 580, 000.00 for the remainder of the working period. He further alleged that he was entitled to salary increments and other allowances for the succeeding period.

The respondent filed the response to the claim on 26.07.2013 through Kaka Kamau & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs. The respondent admitted that it employed the claimant to the position of credit controller effective 01.03.2012. The respondent stated that the claimant was irresponsible, uncooperative and impossible to work with rendering his continued employment untenable. The contract of service was terminated by the letter dated 15.02.2013 and the claimant collected on 18.02.2013 the full terminal dues of Kshs.108, 339.00. The claimant signed an acceptance and discharge in full settlement of all his entitlements and dues and absolved the respondent from all and any liability whatsoever and absolutely. The claimant then endorsed thereon, "TAKEN WITHOUT PREJUDICE ANY FURTHER CLAIMS" The Court returns that in view of the endorsement it was clear that the claimant was at liberty to pursue further claims including filing of the present case. The claimant filed the reply to defence on 07.08.2013 stating as much.

The only issue for determination is whether the claimant is entitled to the remedies as prayed for.

The main remedy prayed for is for payment of salaries and allowances together with salary increments for lost future earnings.

First there is no reasonable ground attributable to the termination or the respondent generally that rendered the claimant unable to secure alternative gainful engagement after the termination.

Second, the contract of employment provided that either party could terminate the contract by giving the other one month notice or one month pay in lieu of notice. Thus there was nothing unfair in terminating suddenly with pay of a month's salary in lieu of notice and as envisaged in section 36 of the Employment Act, 2007.

Third, the contract of employment never provided that the claimant would retire upon attaining 60 years of age.

Accordingly, the claimant's suit will fail.

In conclusion judgment is hereby entered for the respondent against the claimant for dismissal of the claimant's memorandum of claim with costs.

Signed, dated and delivered in court at Nairobi this Friday 2nd November, 2018.

BYRAM ONGAYA

JUDGE