



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 690 OF 2014

(Formerly CMCC No. 13486 of 2005)

JAMES MPONDA MBOTELA.....CLAIMANT

VERSUS

ALLIANCVC GROUP MANAGEMENT COMPANY

LTD T/A ALLIANCE HOTELS AND RESORT.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 14th December, 2018)

JUDGMENT

The claimant filed a plaint on 14.12.2005 through Lumumba Mumma & Kaluma Advocates. The claimant prayed for judgment against the respondent for:

- a) A declaration that the termination of the plaintiff's employment with the defendant was illegal, wrongful and unlawful.
- b) Terminal benefits and dues.
- c) Costs of the suit.
- d) Interest on (b) and (c).

The claimant's case was that the respondent employed him as an accounts clerk on 28.08.1980 and he was wrongfully and unlawfully dismissed on 26.11.2002. The claimant claimed accrued and terminal dues, and damages for wrongful dismissal from employment.

The defence was filed on 07.03.2006 through Gathaiya & Associates. The defendant admitted that it employed the claimant as claimed but that the claimant had no sustainable claim against it for accrued and terminal dues and damages for wrongful dismissal.

The claimant filed the memorandum of claim on 22.05.2014 through Lumumba & Lumumba Advocates particularising his claim and the respondent filed the defence on 09.07.2014 opposing the claims.

The claimant testified that he worked for the respondent for 22 years and as at termination he earned Kshs. 50, 695.00 per month. The claimant testified that on 26.11.2002 he reported on duty and in the early afternoon the respondent's company secretary one Obadiah Kavivia summoned the claimant and handed to the claimant the dismissal letter. The claimant read it and was told to handover. The dismissal letter promised payment of salary up to 26.11.2002 and leave days not taken. The salary was paid on 23.12.2018. 12 days of leave translated to **Kshs. 27, 200.00**. He also testified that he claimed salary arrears for May, June, July, August, and September 2002 making **Kshs. 246, 853.30**. He testified that he claimed contributory pension at Kshs. 3, 025.00 per month for the 5 months of salary arrears making **Kshs.15, 125.00**. He further testified that he was entitled to travelling allowance at Kshs.9, 000.00 which was paid separately as agreed and approved and part of it had been paid and as at termination the outstanding amount was **Kshs. 143, 628.00**. He further testified that he claimed pay in lieu of notice at 3 months as reasonable notice and at a gross pay of **Kshs. 53, 695.00** per month inclusive Kshs. 3, 025.00 per month in pension. He testified that he was abruptly terminated so that he was entitled to 15 days for each of the 22 years served in severance pay. Further, **Kshs. 3, 120.00** NSSF had not been contributed per the statement on record.

The respondent did not call a witness and the court returns that in absence of any other material evidence, the only issue for determination is whether the claimant is entitled to the remedies as prayed for. The Court returns that on a balance of probabilities the claimant has established that by his own evidence he is entitled as follows:

- a) Salary for May to September Kshs. 246, 853.30.
- b) 12 days pending leave days Kshs. 27, 200.00.
- c) Pension for 5 months Kshs. 15, 125.00.
- d) Travelling allowance Kshs. 143, 628.00.
- e) One month notice in lieu of termination notice Kshs. 50, 695.00. (The Court finding that the 3 months as claimed appear not to have contractual basis.)
- f) Service or severance pay was not established as justified as it lacked contractual basis, there was alternative pension provision and the claimant confirmed that he was not severed or rendered redundant.
- g) Cooperative money not remitted was not explained or justified and will fail.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- a) Payment of **Kshs. 483, 501.00** by 31.01.2019 failing interest to be payable thereon at Court rates from the date of filing of the plaint till full payment.
- b) The respondent to pay costs of the suit.

Signed, dated and delivered in court at Nairobi this **Friday 14th December, 2018.**

BYRAM ONGAYA

JUDGE