



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 5 OF 2014

(Formerly HCCC No. 5 of 2006 at Embu)

SIXTUS N.P.K KARUTHI..... PLAINTIFF

-VERSUS-

KENYA COMMERCIAL BANK LIMITED..... DEFENDANT

(Before Hon. Justice Byram Ongaya on Friday 24th March, 2017)

JUDGMENT

The plaintiff filed the plaint on 18.01.2006 through Morris Njage & Company Advocates. The plaintiff prayed for judgment against the defendant for:

- a) An order requiring the defendant to ascertain, calculate and pay up the plaintiff's dues.
- b) Costs of the suit.
- c) Such further or other relief.

The defence was filed on 14.02.2006 through Oraro & Company Advocates. The defendant prayed that the suit be dismissed with costs.

It is not in dispute that the plaintiff was employed by the defendant. The employment was effective 01.12.1979 as per the letter of appointment dated 01.12.1979. The plaintiff served the defendant for 24 months up to 03.06.2003 when his services were terminated.

At all material times the plaintiff served as operations manager at the defendant's Garissa Branch. The plaintiff testified that by the letter dated 28.08.2002 he was invited to travel to Nairobi from his Garissa station to attend a leadership workshop. The workshop was scheduled for 09.09.2002 to 10.09.2002 at the KCB Management Centre. The invitation letter stated that he was to attend without fail and the business head had been requested to make necessary arrangements. The plaintiff testified that the travel arrangements were at his discretion because there were no standing defendant's policies in that regard. The plaintiff testified that he decided to use his private car. Subsequently, the plaintiff testified that he attended defendant's road show in Machakos from 11.09.2002 to 15.09.2002, once again, driving his private car. He testified that he drove from Machakos to Garissa using his private car. By reason of using his private car, he claimed mileage refund of Kshs. 34, 090.00 from the defendant as he had used his private car throughout the travel from Garissa to Nairobi to Machakos and back to Garissa.

By the letter dated 04.12.2002 the defendant questioned the mileage refund claims as was made by the

plaintiff. First it was questioned why the plaintiff used his private car without seeking prior permission, and, in the interest of cutting down costs, he should have used a public transport bus. Second, it was stated that the plaintiff's private car Reg. No. KRS 470 had previously been lying at the plaintiff's home in Embu since the time the plaintiff's had reported to Garissa on transfer; so that it was doubted that the plaintiff had used his private car as was alleged. Thus, the defendant's position was that the plaintiff had to clarify the claim for mileage refund. He was to reply by 16.12.2002.

The plaintiff replied by the letter dated 11.12.2002. The plaintiff admitted that he had used his private car without seeking prior permission which was an oversight on his part and he regretted the lapse. He explained that on occasions he had used public means he had found it inconvenient as the buses were normally crowded and uncomfortable. He left the matter of the claim to be decided by the defendant's Area Director, Eastern Region.

By the letter of 03.03.2003, the defendant asked the plaintiff to reply to the specific issue on whether he had indeed used his private car. The plaintiff replied by his letter dated 07.03.2003 confirming that he had used his car, which was at Embu, throughout the travel and as had been claimed in the mileage refund forms.

By the letter dated 03.06.2003, the plaintiff's employment was terminated effective 03.06.2003. The letter stated that the explanation by the plaintiff that he opted to use his car because public transport was crowded and inconveniencing instead of explaining how he used his car as claimed was found evasive and unacceptable.

The **1st issue** for determination is whether the reason for termination was valid. The plaintiff has admitted that he used his private car without prior authorisation. In view of that admission, the court returns that the reason for termination was valid.

The **2nd issue** for determination is whether the plaintiff is entitled to the remedies as prayed for. The plaintiff confirmed that he was paid one month pay in lieu of the termination notice. He testified that he had abandoned the claim for mileage refund. Defendant's witness (RW) confirmed that the plaintiff was paid the due pension. As the reason for termination has been found to have been valid, the court returns that the plaintiff would not be entitled to future earnings as was submitted for the plaintiff. In any event, there was no specific quantified pleading for such payment. The court considers that whereas the reason for termination was valid, the termination was not the proportionate punishment to impose especially that it was not in dispute that the plaintiff had travelled on official duty as was scheduled. Accordingly, each party will bear own costs of the suit. In conclusion, the plaintiff's suit is hereby dismissed with orders that each party shall bear own costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 24th March, 2017.**

BYRAM ONGAYA

JUDGE