



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NO.296 OF 2015
GIDION KAZUNGU KONDE.....CLAIMANT
VERSUS
PRIDEINN HOTEL & CONFERENCE LTD.....RESPONDENT

J U D G M E N T

INTRODUCTION

1. This is a claim for terminal benefits plus compensation for unfair termination of employment. The reason for the termination was that the employer had lost trust in the employee after the latter sued the former to recover damages for injuries suffered while on duty.

2. Although the respondent filed defence denying liability for unfair termination she never tendered any evidence when the suit came up for hearing on 14/11/2016. Therefore the suit proceeded ex parte whereby the claimant testifies as CW1 and thereafter filed written submissions.

ANALYSIS AND DETERMINATION

3. There is no dispute that the claimant was employed by the respondent from September 2011 as a Chef under one year contract. There is also no dispute that the contracts were renewed every year and the last one was to lapse on December 2014. Finally there is no dispute that the claimant was summarily dismissed by the respondent on 14/7/2014. The issues for determination are

- a. Whether the summary dismissal was unfair.
- b. Whether the reliefs sought should be granted.

UNFAIR TERMINATION

4. CW1 testified that on 9/10/13, he slipped and fell down at the kitchen while on duty and sustained bodily injuries. As a result of the said injuries, he was taken to hospital for treatment and thereafter he served the employer with the letter dated 4/4/2014 demanding compensation for the injuries suffered. In response to the said demand letter, the respondent wrote to the claimant directly, the summary dismissal letter dated 1/8/2014 backdating the effective date to 14/7/2014. The reason cited for the dismissal was that the claimant had sued the company.

5. I have carefully considered the evidence by the claimant and his written submissions. I agree with the

claimant's evidence and submissions that the reason for termination was unfair under Section 46(h) of the Employment Act which state that:

“ the following do not constitute fair reasons for dismissal or imposition of a disciplinary penalty

(h) an employee's invitation or proposed invitation of a complaint or other legal proceedings against his employer except where the complaint is shown to be irresponsible and without foundation.”

6. The letter for summary dismissal dated 1/8/2014 stated as follows in part:

“Dear Mr. Gideon Kazungu

REF: SUMMARY DISMISSAL

It has been brought to my attention that you have sued Prideinn Hotels and Investments Limited who is your employer.

The evidence being the presented letter by your advocate Osoro Omwoyo & Co. Advocates Mombasa letter dated 14/7/2014.

Prideinn hotels & Investment is highly disappointed in you and can no longer trust you. Suing the company you work for proved that you acted against the good will of the company and amounts to gross misconduct according to Employment Act 2007 Section 44(4) (g) hence you are hereby summarily dismissed from the service of Prideinn Group as per Employment Act 2007 Section 44 (g) with effect from 24/7/2014. Kindly handover the company properties to you immediate supervisor as you clear with the company for your last payment to be done. This will give the company room for investigation and defending itself during the case.

Yours sincerely”

6. I have carefully considered the said letter by the respondent and formed the opinion that the said letter does not show that the claim for compensation for the injuries suffered while at work was irresponsible or without foundation. Consequently, I find and hold that the claimant has proved on a balance of probability that his contract of service was unfairly terminated by the respondent by the letter dated 1/8/2014.

RELIEFS

7. Under Section 49 of the Act, an unfairly dismissed employee is entitled to salary in lieu of notice plus compensation of upto 12 months gross salary. In this case the claimant is awarded ksh.11999 as one month salary in lieu of notice. He is further awarded ksh.47996 being 4 months gross salary as compensation for unfair dismissal. In making the said award, I have considered the claimant reasonable expectation to continue service under his fixed term contract which had 5 months before expiry.

8. The claim for gratuity is however dismissed for lack of evidence. Likewise, the claim for overtime is dismissed for lack of particulars and evidence. The claim for refund of the deducted but unremitted NSSF totaling to ksh.1400 is granted. In making the award I have considered the NSSF statement produced by the claimant which shows that no remittance was made from January to May 2013 and June to July 2014. The claim for refund of NHIF is however dismissed for lack of evidence. Finally the claim for leave allowance for two years is dismissed for lack of evidence to prove that he was indeed entitled to any leave allowance for leave not taken.

DISPOSITION

9. For the reasons that the termination of the claimant's contract of service was unfair, I enter judgment

for him in the sum of ksh.61395 plus costs and interest. He will also have a certificate of service.

Dated, signed and delivered this 28th April 2017

O.N. Makau

Judge