



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 56 OF 2016

HUMPHREY MUKUNDI MWANGICLAIMANT

VERSUS

BRADEGATE HOLDINGS LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 14th July, 2017)

JUDGMENT

The claimant filed the memorandum of claim on 29.03.2016 through Peter M. Mthoni & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. Declarations that his claim is valid, that he is still technically or legally in the employment of the respondent company, payment of his salary arrears from 18.10.2015 to the time the honourable court may deem appropriate and alternatively 12 months' gross salary Kshs. 1, 858, 164.00, 3 months' pay in lieu of termination notice Kshs.464, 541.00; unpaid leave for 41.75 days Kshs.307, 870.46; formal letter of termination as well as certificate of service.
- b. Costs of the suit plus interest.

The response to the memorandum of claim was filed on 23.05.2016 through Mwangi Wambugu & Company Advocates. The respondent prayed that the claim be dismissed with costs.

There is no dispute that the claimant was employed by the respondent on 17.09.2013 as a Group General Manager. At termination the claimant earned Kshs. 154, 847.00 per month.

The **1st and main issue** for determination is whether the claimant's termination from the respondent's employment was unfair; and if the claimant is entitled to the remedies as prayed for.

The claimant testified that he was employed on 17.09.2013 and worked for 2 years and 1 month up to 18.10.2015. On 18.10.2015 he testified that the respondent's chairman asked him to convene staff meeting and when the meeting commenced, the chairman took over and chaired the meeting. The chairman then declared that the claimant was no longer the respondent's Group General Manager and the claimant's duties were distributed to the other staff present at the meeting. The claimant testified that when he asked the chairman to state the reasons for the dismissal, the chairman told him to stop asking questions and to handover, pack and leave. The claimant testified that he complied and he left employment. His leave days were computed by the human resource officer at 41.75 but were not paid. The last full pay was for September 2015 and was also paid 18 days worked in October 2015. At termination, the claimant admitted that he owed the respondent a salary advance of Kshs.100, 000.00. The

claimant stated that he had not received a termination letter.

The respondent failed to call the chairperson to testify about the events at the meeting of 18.10.2015 and the respondent's witness (RW) testified that he was not aware that the chairperson had verbally terminated the claimant's employment. It was RW's testimony that the claimant absconded duty after 17.10.2015 and that the meeting the chairperson was present at had been held on 17.10.2015. RW testified that the respondent's human resource officer had informed RW that the claimant had been dismissed; that was in March 2016 being about 4 months from the meeting of 17.10.2015. RW stated that the claimant had been a good employee and it was not clear why the claimant had absconded duty. RW was not sure that the dismissal letter had been delivered to the claimant. RW recalled that after the meeting of 17.10.2015 the claimant had handed over the car keys.

The court has considered the evidence on record. The court returns that there is no reason to doubt the claimant's account that he was verbally dismissed by the respondent's chairperson at the meeting held on 17.10.2015 or 18.10.2015 as RW confirmed that after that meeting, the claimant handed over the keys to the official car. The court returns that the dismissal was verbal, without a notice and a hearing as per section 41 of the Employment Act, 2007; and without a valid reason as envisaged in section 43 of the Act. It was unfair termination and the court has considered the evidence by RW that the claimant was a good worker and further considered that the claimant was humiliated and intimidated before the junior staff who worked under him as the chairperson dismissed him verbally at the meeting convened for that purpose. Accordingly, and considering that the claimant desired to continue in the respondent's employment, he is awarded the 12 months' salaries under section 49(1) (c) of the Employment Act, 2007 making **Kshs.1, 858, 164.00** as prayed for. The claimant is further awarded **Kshs. 154, 847.00** being one month pay in lieu of the termination notice and under section 35 (1) (c) of the Act. The claimant and RW are in agreement that for the 2 years served the claimant did not take leave and he is awarded **Kshs.307, 870.46** in lieu of the annual leaves and as prayed for. He is entitled to the certificate of service per section 51 of the Act.

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

- a. The respondent to pay the claimant a sum of **Kshs.2, 320, 881.46** by 01.10.2017 failing interest to be payable thereon at court rates from the date of this judgment till full payment.
- b. The respondent to deliver to the claimant a certificate of service by 01.09.2017.
- c. The declaration that the termination of the claimant's employment by the respondent was unfair.
- d. The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 14th July, 2017.**

BYRAM ONGAYA

JUDGE