



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1028 OF 2016

ANTHONY LUSENAKA NAMUNYU.....CLAIMANT

VERSUS

AFRICA PS FIRMS DEVELOPMENT COMPANY LIMITED.....RESPONDENT

Mr. David Olado for claimant

Mr. Sichangi for respondents

JUDGMENT

1. The claimant vide a memorandum of claim filed on 2nd June 2016 seeks;
 - (i) One month's salary in lieu of notice in the sum of Kshs.330,000/=.
 - (ii) Salary arrears for November 2014 to July 2015 in the sum of Kshs.1,820,000/= and
 - (iii) General damages for loss of employment and future earnings.

Facts of the Case

2. The claimant was employed by the respondent as a practice Group Executive Secretary at a monthly salary of Kshs.330,000/= per month with effect from 15th October 2014. The contract of employment was reduced to writing and was for a continuous period. The other terms of service are contained in the contract which was produced before court.
3. The claimant worked continuously until 1st July 2015 when he received a letter terminating his contact with immediate effect. The letter of termination dated 1st July 2015 was produced in court.
4. The reason given in the letter of termination was transition of the respondent into an entrepreneurship model subsequent to which all existing employment contracts were terminated.
5. On the face of the letter therefore, termination of employment contracts was for operational reasons beyond the control of the employees hence retrenchment in terms of Section 40 of the Employment Act, 2007.
6. The respondent was served with the memorandum of claim and summons on 13th June 2016 and an

affidavit of service was filed by Evans Ndunda Mutisya a duly authorized process server. The notice of summons was received by one Janet Okumu Administrator of the respondent who appended a signature on the returned notice of summons and office stamp.

7. The respondent entered appearance via Sichangi Partners Advocates on 15th July 2016. No defence was filed to the suit. The matter proceeded to formal proof on 21st February 2017. The claimant testified under oath and adopted a witness statement filed on 2nd June 2016 as his evidence in chief.

8. The claimant testified that as from November 2014 to March 2015, the respondent paid him a monthly salary of Kshs.150,000/= instead of Kshs.330,000/= less statutory deductions leaving an unpaid balance of Kshs.180,000/= per month. The claimant seeks payment of the balance in the sum of Kshs.1,820,000/= which the court awards.

9. Secondly the termination was without notice and the claimant seeks payment of Kshs.330,000/= in lieu of notice which the court grants accordingly.

Compensation

10. It would appear that the termination of employment was a retrenchment for operational reasons. The respondent did not follow the procedure provided under Section 40 of the Employment Act, 2007 by not giving a one month's notice to the claimant and labour officer to prepare them for the eventuality of retrenchment and to allow consultations as to how the retrenchment may be avoided and/or to mitigate the negative impact of the retrenchment. This is a mandatory requirement without which, the retrenchment becomes substantively and procedurally unfair.

11. The respondent further failed to pay the claimant terminal benefits upon termination including notice pay, arrear salary and severance pay which are mandatory requirements under Section 40 of the Act.

12. Accordingly, the retrenchment was unlawful and unfair and in violation of Section 40 as read with Section 45 of the Act. The claimant is entitled to damages in terms of Section 49 (1) (c) as read with Section 49 (4) of the Act.

13. In this respect, the claimant lost good career prospects. He lost means of livelihood without notice and therefore opportunity to prepare himself; was not paid any terminal benefits to ameliorate the impact of sudden termination and as a result he suffered loss and damage. The claimant had served for only one year and the court in consideration of all the above factors awards the claimant the equivalent of one month's salary as compensation for the unlawful and unfair termination of employment in the sum of Kshs.330,000/=.

14. In the final analysis judgment is entered for the claimant as against the respondent as follows;

(a) Notice pay Kshs.330,000/=

(b) Arrear salary Kshs.1,820,000/=

(c) Compensation Kshs.330,000/=

Total award Kshs.2,480,000/=

(d) The award in (a) and (b) above is payable with interest at court rates from date of filing suit till payment in full and that in (c) above from date of judgment till payment in full at the same interest rate.

(e) Costs to abide the outcome.

Dated and delivered at Nairobi this 1st Day of September 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE