



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 2 OF 2014

(Before D. K. N. Marete)

JOSEAH KIPRONO LANGAT.....CLAIMANT

VERSUS

KONONIN TEA GROWERS SACCO SOCIETY LIMITED....RESPONDENT

JUDGEMENT

This matter was originated by way of a Statement of Claim dated 27th May, 2013. It does not disclose on issue in dispute or its face.

The Respondent in a Response dated 28th November, 2013 denies the claim and prays that the same be dismissed with costs.

The claimant's case is that at all material times to this cause, he was an employee of the claimant as Secretary Manager under Job Group II.

It is the claimants further case that on 28th December, 1995, he was issued with an appointment letter as Secretary Manager with effect from 29th December, 1995 earning a salary of Kshs.4,500 per annum in a scale of Job Group II with an increment every 1st January of every financial year. This letter was signed on 30th December, 1995. He was thereon posted to the respondent's office at Mogogosiek and assigned pay roll No.001.

The claimants other case is that;

*7. The claimant avers that on or about **January 2005**, the respondent made malicious and false accusations and or allegations against the claimant which acts led to the wrongful, unlawful and malicious arrest and detention of the claimant at Litein Police Station and thereafter on **17/1/2005**, the claimant was arraigned in court and charged with several counts of stealing by servant, conspiracy to defraud and failing to prevent commission of a felony in **Sotik SRMCCR Nos.93 of 2005** and **Sotik SRMCCR No.2161 of 2005; Republic versus Joseah Langat & Another.***

It is the contention that prior to these allegations, the respondent had issued him with a letter dated 10th December, 2004 sending him on compulsory leave effective from the date of the said letter. He took leave as directed and has not been paid to date.

The claimant again avers that he had not been terminated at any one time or even been notified of such

termination. At the time of compulsory leave he earned a gross salary of Kshs.25,540.00 per month.

The claimant's further case is that his case was ultimately prosecuted and acquitted of all charges in the two cases. He puts it thus;

12. The claimant avers that pursuant to the false and malicious accusations by the respondent, he was prosecuted and eventually the claimant was acquitted of all charges in the two case with; Sotik SRMCCR No. 93 of 2005 and sotik SRMCCR No. 2161 of 2005 which was transferred to Bomet and given SRMCR No. 808 of 2011 on 23/12/2011 and 17/5/2012 respectively.

It is his other case that this termination was tainted with illegality and a breach of the terms and conditions of employment as follows;

- a) Failing to reinstate the claimant after the termination of the Criminal Charges*
- b) Failing to make lump sum payment to the claimant of his accumulated salary from December 2004 to date.*
- c) Failing to pay the claimant his salary after he was acquitted.*
- d) The respondent denied the claimant an opportunity to state his case.*
- e) The claimant has not been afforded the rules of natural justice general.*
- f) The decision not to pay the claimant was not officially communicated to the claimant.*
- g) The decision not to make payments to the claimant was arbitrary.*

He prays as follows;

- a) A declaration that the claimant is deemed to be in employment with the respondent and that his contract of employment has not been terminated.*
- b) A order directing the respondent to allow the claimant resume his duties as an employee of the respondent.*
- c) An Order that the claimant be paid all his salary and benefits from the time of the compulsory leave until the date reinstatement or until the date ordered by court.*
- d) Cost of the suit.*
- e) Any other relief that the Honourable Court may deem fit to grant.*

The respondent's case is one of denial of the claim. It is her contention that her actions against the claimant by sending him on compulsory leave and nonpayment of salary were just justified and lawful and the claimant is not entitled to the relief and orders sought.

The respondent further case is that upon the claimant been sent on compulsory leave and while the same was pending, he (the claimant) took up alternative employment in a sister Sacco and therefore, the issue of termination of employment does not arise.

The issues for determination therefore are;

1. Was the termination of the employment of the claimant was wrongful, unfair and unlawful?
2. Is the claimant entitled to the relief sought?

3. Who bears the costs of this claim?

The 1st issue for determination is whether the termination of the employment of the claimant was wrongful, unfair and unlawful? The claimant in his written submissions dated 16th October, 2017 forments a case of unlawful termination of employment.

It is the claimant's other submission that the respondent did not adduce any reasons for termination and that the processes of termination espoused in Employment Act, 2007 were not pursued by the respondent. This therefore renders the termination unlawful.

The claimant further submits that indeed, he has not been terminated from employment to date. He also refuted receipt of a letter of show cause.

Lastly, the claimant cites a contradiction in the case and submissions of the respondent as appertains the reasons for termination. In his letter of termination, this is not cited as a ground for termination. This weakens the respondent's case.

The respondent's in her written submission dated 9th October, 2017 brings out a case of misconduct by the claimant at the work place. It is her submissions that the claimant failed to discharge his functions and willfully neglected to perform his work leading to suspicion of impropriety and therefore the dismissal.

The respondent further seeks to distinguish the place of disciplinary proceedings *vis-a-vis* criminal proceedings and in so doing seeks to rely on section 44 (4)(c) and (g) of the employment act as follows;

44. (c) An employee willfully to perform any work which it was his duty of perform, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract to have performed carefully and properly.

g) An employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his employer or his employers property.

It his submission that criminal proceedings are not a dictate of employment proceedings or indeed civil proceedings as the parameters used in the different systems are varied and also that the employer has no authority over the conduct of criminal proceedings.

This is a mixed up matter. The parties' cases are not only opposed to each other but their cases entangling. The claimant insists that he has not to date been terminated from employment and seeks a reinstatement and payment of his due salaries to date. The respondent on the other hand denies this and presents the following documents in support of her case;

- 1. Respondent's letter dated 2nd December, 2004.*
- 2. The Claimant's letter dated 14th December, 2004.*
- 3. Minutes of the Central Management Committee meeting held on 28th September, 2009.*
- 4. The Minutes of the Executive Committee meeting held on 4th June 2005.*
- 5. Letter of dismissal dated 29th September 2009.*

These suppress the denial of termination of employment and claims of procedural unfairness by the claimant. They demonstrate substantive and procedural fairness in disregard of the claimants allegations. These tilt the case towards the respondent and leave that of the claimant gapping.

The claimant has failed to establish a case of unlawful termination of employment on a balance of probability. This balance overwhelms towards the case of the respondent – see the Respondent Further List of Documents above cited. The respondents witness statements also affirm this. I therefore find a case of lawful termination of employment and hold as such.

On a finding of a case for lawful termination of employment, the claimant is disentitled to the relief sought.

I am therefore inclined to dismiss the claim with orders that each party bears their own costs of the claim.

Delivered, dated and signed this 17th day of October 2017.

D. K. Njagi Marete

JUDGE

Appearances

1. Mr. Koko instructed by Obondo Koko & Company Advocates for the Claimant.
2. Mr Orina instructed by E.M Orina & Company Advocates for the Respondent.