



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 399 OF 2014

(formerly Nairobi HCCC No. 110/2008)

(Before Hon. Lady Justice Hellen S. Wasilwa on 25th January 2016)

THOMAS ATOLI OYANI..CLAIMANT

VERSUS

ATTORNEY GENERAL (sued for and on

behalf of the Commissioner of Police).....RESPONDENT

JUDGMENT OF THE COURT

1. On 28/3/2008, the Claimant herein filed a Complaint before the High Court Nairobi as HCCC No. 110/2008. This case was later transferred to the Industrial Court on 11/3/2004 for hearing and disposal. It was his contention that he had been employed by the Defendant as a public officer serving under Police Force No. 84474 and that at all material times, he has served the Defendant and public at large with dedication, loyalty and total obedience.
2. He avers that on 3rd January 2007, the Defendant wrongfully and without any colour of right dismissed him from employment. He states that the dismissal was with malice and illegal on the part of the Defendant. He avers that he was punished for an offence he was not involved in at all. He also states that he was not given an opportunity to defend himself against the allegations made against him and passing judgment on him based on trumped up charge. He contends that no investigations were done and that he was sacrificed for a dispute before GSU and Regular Police.
3. The Claimant contends that his dismissal was wrongful and done without any notice to him. The Claimant avers that he has suffered loss and harm and demands compensation from the Defendants. He prays for general and special damages for wrongful termination.
4. The Respondents filed their defence on 28/7/2008 through their Litigation Counsel. They aver that the Claimant was dismissed on 3/1/2007 but deny that the same was done illegally and maliciously. They also deny particulars of malice and illegality. It is the Respondents position that the Claimant was dismissed on his own plea of guilty for committing an act to the prejudice of good order and discipline.
5. They deny that they are liable to compensate the Plaintiff and they ask Court to dismiss this case with costs.

6. Having considered the evidence of both parties, the issues for determination are as follows:

1. Whether there were valid reasons to warrant dismissal of the Claimant.

2. Whether due process was followed before the dismissal.

3. What remedies if any the Claimant is entitled to in the circumstances.

7. On the 1st issue, the reason for the dismissal of the Claimant as per his dismissal letter dated 3.7.2007 is that:

“Is guilty of an act to the prejudice of good order and discipline Contrary to Regulations 3(41) of the Police Regulations.

8. Particulars were as follows:

“No. 84474 PC Thomas Atoli (Defaulter). In that on the 26th day of December 2006 at about 2200 hours at Malaba Town in Teso District within Western Province, you were guilty of an act to the prejudice of good order and discipline, in that you in the company of three Constables, forcefully took Ms. Jacinta Mugure and Ms. Damaris Wangare to Teso Motel Lodges against their will for unknown reasons, an act that the duo resisted”.

9. The letters aver that the Claimant pleaded guilty to this charge and so was dismissed from the service. The question then is whether the Claimant pleaded guilty to these charges and whether indeed he committed the offence.

10. Under Section 64 of the Police Act:

“Every Police Officer shall be subject to Force Standing Order and to the provisions of the Code of Regulations for the time being in force so far as the same are not inconsistent with the provisions of this Act or any Regulations or Standing made thereunder”.

11. Under the Regulation made under the Police Act, Regulation 3(41) states that any Officer:

“is guilty of any act, conduct disorder or neglect to the prejudice of good order and discipline not here before specified, shall be guilty of an offence against discipline”.

12. The Regulations do not however provide sentence for the breach complained off.

13. The Respondents presented to Court orderly room proceedings conducted against the Claimant herein on 30/12/2006, show that the Claimant pleaded guilty to the charge by stating that: ***“it is true, we took them there”***. He also signed the document against the plea of guilty. His mitigation is also recorded: ***“I am sorry and I promise it will never happen again Sir”***.

14. A decision was then made to dismiss him from the force.

15. The Claimant has stated that the charges were trumped up because of the animosity between the Regular Police and GSU where an OCS had been killed. This however does not explain why the Claimant pleaded guilty to the charges when he knew he was innocent.

16. It is true that the alleged people he took to the police station were never called as witnesses but this was not necessary given that the Claimant had already pleaded guilty.

17. It is this Court's finding that by the Claimant electing to plead guilty to orderly room proceedings which he knew were false and trumped up, he made an election which gave ammunition to the Respondent and he cannot turn around and deny that fact at this point alleging that he was coerced.

18.I find that by his conduct the Claimant gave the Respondent reason to dismiss him from the service as per the Police Regulations.

19.I therefore find that the Claimant's case has no merit. I therefore dismiss this case accordingly with costs to the Respondents.

Read in open Court this 25th day of January, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Respondent

No appearance for Claimant