



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT KISUMU
CAUSE NO. 241 OF 2014

Before Hon. Lady Justice Maureen Onyango)

MIRIAM BARIDI AMASWACHECLAIMANT

VRS

INNOVATIONS FOR POVERTY ACTIONRESSPONDENT

J U D G E M E N T

The Claimant Miriam Baridi Amaswache filed this claim against the Respondent Innovations for Property Action alleging unlawful termination of her employment by the Respondent. She prayed for the following remedies:

1. A declaration that the termination was carried out unlawfully and/or unfairly
2. Salary in lieu Notice
3. Unpaid salaries
4. Compensation or damages for unfair termination and breach of contract
5. Costs and interest on this claim

The Respondent filed a response to the Memorandum of claim denying the claim.

The case was heard on 15th June, 2015. The Claimant testified on her behalf while the Respondent called two witnesses, Martin Obwoba (RW 1) who was the immediate supervisor of the Claimant, and Nancy Lavender Otieno (RW2), the Respondents Human Resource Manager based in its Kisumu office. The parties thereafter filed written submissions.

Facts

The Claimant was employed by the Respondent as a field officer in January, 2014 as a casual. She was issued with an employment contract on 8th February, 2014. The contract period was from 8th February, 2014 to 31st December, 2014.

According to the contract she was entitled to a salary of Shs.16,200 per month, gratuity of 5% of cumulative pay, payable in December, and annual leave of 2 working days every month.

The Claimants work entailed sensitising and training community members on the Respondents chlorine dispenser program. To execute her field work she was required to engage some community members to mobilise the community together at designated venues for the training. The mobilisers were paid

shs.150/= each. The Claimant was issued with cash to cover all her scheduled meetings each day. She accounted for the money with payment forms signed by the recipients of the money who also gave details of their telephone numbers.

As a control mechanism the supervisor would pick a few names on the payment forms at random and call them to confirm if the information was correct.

Sometime in June, 2014 it was discovered through the random calls that the Claimant had not paid some mobilisers meaning that the signatures on the payment forms she submitted were falsified. When the Claimant was asked about it, she sent the money to some of them by Mpesa and asked them to call the office to confirm that they had been paid. She also called others and promised to pay them by Mpesa at a future date. One of the mobilisers who had not been paid called the office to demand payment after learning that other mobilisers had been paid.

The issue was reported to the Human Resource Manager who advised the Claimant's supervisor RW1 to obtain a statement from her. In the two statements annexed as appendix 5 mobilizers of the Respondent's bundle of documents, the Claimant admitted not paying at least 5 people whose names appeared on the payment forms. She stated that she did not pay them because she did the mobilisation herself.

Based on this information the Respondent terminated the Claimant's contract of employment by letter dated 18th July, 2014.

The Claimant alleges the termination was unfair because she was never issued with a show cause letter or given an opportunity to respond to the allegations and further that there was no hearing. The Claimant further alleges the dismissal was based on mere allegations as the persons alleged not to have been paid were never called as witnesses.

The Claimant alleges the termination did not comply with rules of natural justice and that the forms relied upon to terminate the Claimant's contract were not signed by her supervisor/ coordinator RW 1.

The Claimant prays for payment for the unexpired term of the contract from July to December, 2014 at Shs.97,200, gratuity of Shs.9,700, leave not taken at Shs.16,200 and underpayments for May, 2014 Shs.4,306, March, 2014 Shs.1,292 and February 2014 Shs.4,386 making a gross total of Shs.133,103. The Claimant further prays for punitive and exemplary damages equivalent to 12 months salary and a certificate of service.

The Claimant relied on the case of *Lucia Muthoni Meria v Academic Service Ltd (2015) eKLR* where the court awarded the Claimant 12 months salary for wrongful termination. The Claimant also relied on the case of *Abraham Gumba v Kenya Medical Supplies Authority Cause No. 1073 of 2012* in which the court awarded 10 months salary as compensation for unfair termination.

Respondent's case

For the Respondent it was submitted that the termination of the Claimants employment was valid as the Respondent complied with rules of natural justice and that the Claimant was guilty of gross misconduct. The Respondent relied on the case of *Joseph Muthama Ndambuki and 3 Others v Delmonte (K) Limited [2012] eKLR*, and *Edward Kirago & Another v Shell & BP (Malindi) Kenya Ltd [2009]eKLR*

Determination

The issue for determination is whether the termination of the Claimant's employment was unfair. Section 45 of the Employment Act provides that termination must meet both procedural fairness and validity of reason. Otherwise it would be unfair.

In the present case, the Claimant admitted in her statement dated 10th July, 2014 that she did not pay the person whose names appear on the statement as she carried out the mobilisation herself. This means that

the names, telephone numbers and signatures on the payment forms were falsified.

Having admitted to the falsification of the forms in the statement there was no reason for the Respondent to hold another hearing session. The Claimant however admitted that the Human Resource Manager visited her duty station at Webuye and held meetings with all employees who had been accused of falsifying the payment forms but on that date she was absent.

The Claimant's employment was thus terminated on her own written admission. I find no merit in the Claimant's contention that the termination of her employment was unfair.

On remedies, the Claimant admitted that the Respondent offered to pay her Shs.43,364 made up of salary for 18 days worked in the month of July, 2014 at Shs.11,214, one month's salary in lieu of notice at Shs.16,200, 11 days leave not taken at Shs.10,280 and Gratuity for 8 months at Shs.5,670. She stated that she rejected the payment which was made by cheque as she did not agree with the same. I find that the offer made by the Respondent constituted full payment of what the Respondent owed the Claimant as terminal dues.

The Claimant's prayers for payment of unexpired term of her contract has no contractual or legal basis as the termination of her employment was valid and there was no breach of her employment contract. Her claim for gratuity for the entire contract period including the unexpired period also has no basis as she was offered gratuity for the period served in accordance with the terms of her contract. The claim for underpayments was not proved. All the payslips she submitted show that she was paid full salary less statutory deductions.

The Claimant has also not proved that she is entitled to punitive and exemplary damages equivalent to 12 months salary as claimed.

The Claimant is however, entitled to certificate of service which the Respondent is directed to issue to the Claimant within 30 days from date of judgment.

Save for issuance of the certificate of service the claim by the claimant is dismissed with no orders for costs.

Dated signed and delivered this 21st day of January, 2016

MAUREEN ONYANGO

JUDGE