



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT OF KENYA AT NAIROBI
CAUSE NO. 1055 OF 2011
CHARLES THUO MUGUKU.....CLAIMANT
VERSUS
K-UNITY SAVINGS & CREDIT
CO-OPERATIVE SOCIETY LIMITED.....RESPONDENT
M/S. Mwangi for the Claimant
M/S. Musungu for the Respondent
JUDGMENT

1. The suit was commenced on 30th June 2011 vide a memorandum of claim dated 29th June 2011. The Claimant seeks reliefs set out in paragraph 12 of the statement of claim in the sum of Kshs.806,750.00 tabulated as follows;

- a. Underpaid salary for thirteen (13) months at Kshs.28,000.00 per month totaling Kshs.364,000;
- b. Underpaid house allowance for thirteen (13) months at Kshs.7,000.00 per month totaling Kshs.91,000;
- c. Unremitted contribution to retirement benefits scheme for thirteen (13) months at Kshs.4,200 per month in the sum of Kshs.54,600.00;
- d. Under paid two (2) months' salary in lieu of notice including house allowance in the sum of Kshs.70,000;
- e. Unremitted contribution to retirement benefits scheme for the two (2) months notice period in the sum of Kshs.8,400; and
- f. service pay for fifteen (15) days for each completed year of service for two and half (2^{1/2}) years in the sum of Kshs.218,750.00 (175,000 x 30 x 15 x 2^{1/2}).

2. The brief facts of the Claimant's case are that; he was employed by the Respondent in the position of General Manger on or about 10th May 2004 earning a monthly gross salary of Kshs.198,000.00 as shown in the pay-slips produced in Court for the period May 2004 to June 2005.

3. In July 2005, the Respondent reviewed its policy whereupon the employees' public relations allowance was lumped up together with the basic salary and the resultant total was employees' new basic salary on which the employees' house allowance was calculated at 25%. At the time the Claimant's basic salary was Kshs.130,000.00 and his public relations allowance was Kshs.10,000.per month.
4. In terms of the review therefore, the Claimant's basic salary was Kshs.140,000.00 and the revised house allowance was Kshs.35,000 making a gross monthly pay of Kshs.175,000.00.
5. In July 2005, the Respondent reduced the Claimant's basic monthly salary from Kshs.130,000.00 to Kshs.112,000.00 and the gross monthly salary from Kshs.198,000.00 to Kshs.142,500.00. This change is depicted in the pay-slips produced in Court for the period after July 2005.
6. The Claimant states that the salary reduction was unlawfully done by the Respondent and without his consent.
7. The salary reduction aforesaid resulted in the underpayments, and under-remittances set out under paragraph 12 of the statement of claim which the Claimant now seeks to be paid by the Respondent totaling Kshs.806,750.00.
8. The Claimant resigned from the employ of the Respondent due to the frustration caused by the reduction of his salary on 31st July 2006. Upon termination of employment, the Claimant was paid two (2) months salary in lieu of notice in the sum of Kshs.224,000.00 and Kshs.36,000 in lieu of thirteen (13) days leave making a sum of Kshs.280,000. Various deductions were made on the payment as seen in annex 24 of the statement of claim leaving a total of Kshs.45,268.00. The Claimant wrote to the Respondent variously demanding payment of the outstanding payments set out in the statement of claim.
9. The Claimant testified under oath in support of his claim and was subjected to intense cross-examination by the counsel for the Respondent.
10. The Claimant prays that the suit be allowed with interest on the amounts claimed and costs of the suit.

Response

11. The Respondent filed a memorandum of defence on 10th August 2011 in which it admits employment of the Claimant as its General manager at a monthly salary of Kshs.130,000.00 only and relies on appendix 1 a & b, the letters of appointment.
12. That the Claimant was notified and accepted at all material times the terms of service and that the benefits payable to him would be governed by the Unions staff policies as will be promulgated from time to time.
13. The Respondent denies that the Claimant's salary review was done unilaterally adding that the same was done when a new policy was promulgated with the involvement of the Claimant geared towards having all the payments accord to strategic plan, previous board resolutions and to reduce a bloated wage-bill.
14. That the discussions were conducted in a meeting that involved the Claimant and the resolution to lower the salaries was passed in the presence of the Claimant and with his own consent.
15. The Respondent produced Appendix '2' a copy of the minutes of the relevant meeting held on 18th July 2005 and in particular minute No. 1 (iii) on staff and strategic planning sub-committee.
16. The Respondent deny that the employment of the Claimant was wrongfully and unlawfully terminated stating that the Claimant resigned from employment.
17. The Respondent called Mr. Simon Njoroge Njenga, the Chief Executive Officer of the Respondent

(RW1) to testify on behalf of the Respondent. He reiterated the narrative by the Respondent on this dispute and in particular that the Claimant had resigned from employment on 3rd July 2006 and that the Claimant had consented to the abolition of disturbance and public relations allowances and the house allowance ratio was adjusted from 100:40 to 100:25 to save the Respondent Kshs.417,000.00. That the Claimant was the Secretary at the meeting and wrote the minutes.

18. That Claimant as the General Manager led in the formulation of the policy but did not vote in the Board meeting. The General Manager had generated the agenda for the meeting. He produced Appendix 3a, the handwritten letter of resignation by the Claimant dated 31st July 2006. The resignation was accepted by the Respondent vide a letter dated 31st July 2006. That the Claimant was paid terminal dues less the loan owed to the Respondent by the Claimant.

19. The witness was not working for the Respondent at the time but relied on the records of the Respondent in his testimony.

20. RW1 admitted that the minutes of the meeting do not show the basic pay would be reduced. He admitted the Claimant's basic pay was reduced from Kshs.130,000.00 to 112,000.00 from the pay-slips. The witness acknowledged that the basic pay of some staff went up. RW1 also could not produce a letter authorizing the reduction of salary for the Claimant. RW1 could not refute the Claimant's evidence that the Claimant was not aware that salaries would be discussed at the meeting and that the Claimant did not propose that agenda. RW1 conceded that the agenda was introduced at the meeting by the Chairman. RW1 stated that service pay was not payable to employees who were on provident fund like the Claimant. That this was only payable to retrenched employees.

Determination

The issues for determination are;

- i. whether the Claimant consented to the reduction of his salary;
- ii. whether the Claimant is entitled to the relief sought.

Issue i

21. The Claimant did not seek any relief regarding the alleged wrongful and unlawful termination of employment.

22. The Claimant conceded that he resigned from employment due to the frustration emanating from unlawful reduction of his salary.

23. The Court was presented with competing evidence on whether the Claimant consented to the reduction of his salary or not. The Claimant produced pays-lips showing that he earned a gross salary of Kshs.198,000.00 up to the year June 2005. However, the salary was reduced from July 2005 to 142,500.00 because the basic salary was reduced from Kshs.130,000.00 to 112,000.00 and the house allowance reduced from Kshs.52,000.00 to Kshs.28,000.00.

24. The Claimant denied that he gave any consent to the Respondent to reduce his salary. The Respondent was unable to produce any document authorizing the deduction of the Claimant's basic salary.

25. The minutes of the Board meeting proposed abolition of public relations allowance and reduction of house allowance from 40% of the basic salary to 25% of the basic salary. The Claimant was the Secretary to the meeting and the record does not show he participated at all in the decision making of the Board. Indeed RW1 conceded that the Claimant did not have a vote at the meeting. No correspondence pursuant to that meeting was produced indicating that the Claimant as the General Manager agreed to the deduction of his salary and benefits. The Claimant produced pay-slips of other staff members showing

that their basic salaries had risen from July 2015, and that the Claimant was discriminated by the Respondent by reducing his basic salary.

26. The Claimant has proved on a balance or probability that his salary and benefits were wrongly and unlawfully reduced by the Respondent without his consent with effect from July 2005 up to the date of his resignation on 31st June 2006.

27. The Claimant is therefore entitled to the relief set out under paragraph 12 of the statement of claim except the claim under 12 (f) for payment of severance pay.

Issue ii

28. The Court therefore awards the Claimant as against the Respondent as follows;

- a. underpaid salary for thirteen (13) months in the sum of Kshs.364,000.00
- b. underpaid house allowance for thirteen (13) months in the sum of Kshs.91,000.00;
- c. underpaid contributions to the Retirement Benefits Scheme for thirteen (13) months in the sum of Kshs.54,600.00;
- d. unremitted contributions to the Retirement Benefits Scheme for the two (2) months' notice in the sum of Kshs.8,400.00

Total award Kshs.518,000.00.

- e. the award is payable with interest at Court rates from date for filing this suit till payment in full.
- f. the Respondent is to pay the costs of the suit.

Dated and Delivered at Nairobi this 15th day of January 2016.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE