



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 2281 OF 2014

GEORGE NDUTIRE KARUGO.....CLAIMANT

VS

KENYA ORIENT INSURANCE LIMITED.....RESPONDENT

AWARD

Introduction

1. George Ndutire Karugo was employed by Kenya Orient Insurance Limited in the position of Internal Assessor from 10th April 2012 until 16th May 2014 when his employment was terminated. His claim is contained in a Memorandum of Claim dated 19th December and filed in Court on 24th December 2014.
2. The Respondent filed a Memorandum of Response on 30th January 2015 but did not attend the hearing in spite of due notification. The Court therefore heard the Claimant *ex parte* on 3rd December 2015.

The Claimant's Case

3. The Claimant was employed by the Respondent on 10th April 2012. At the time of his termination, the Claimant's monthly emoluments were as follows:
 - a. Basic Salary – Kshs.112,500.00
 - b. Fuel allowance – Kshs.20,000.00
 - c. Telephone allowance – Kshs.7,500.00
 - d. Duty allowance – Kshs.10,000.00
4. On 16th May 2014, the Claimant received a letter terminating his employment with the Respondent. It is the Claimant's case that no reason was advanced for his termination and he was not given an opportunity to be heard.
5. The Claimant's claim is as follows:
 - a. A declaration that the termination of his employment was unlawful and unfair;
 - b. Kshs. 1,800,000 being the equivalent of 12 months' salary as damages for unlawful termination;

- c. Certificate of service;
- d. Costs plus interest.

The Respondent's Case

6. In its Memorandum of Response filed on 30th January 2015, the Respondent admits having employed the Claimant but denies that the termination was unlawful or unfair.

7. It is the Respondent's case that the termination was undertaken in accordance with the terms contained in the Claimant's letter of appointment dated 10th April 2012. Citing Clause 7 of the letter of appointment, the Respondent contends that it was entitled to terminate the Claimant's employment by giving one month's notice or paying one month's salary in lieu without assigning any reasons.

Findings and Determination

8. There are two issues for determination in this case:

- a. Whether the termination of the Claimant's employment was lawful and fair;
- b. Whether the Claimant is entitled to the remedies sought.

The Termination

9. The termination of the Claimant's employment was effected by letter dated 16th May 2014 stating as follows:

“Dear George,

RE: TERMINATION OF EMPLOYMENT

Your employment contract dated 10th April 2012 hereby refers.

We regret to inform you that your employment with us is hereby terminated with effect from Friday, 16th May 2014. Following this, we are offering you 30 days pay in lieu of notice as indicated in your employment contract.

By a copy of this letter the H.R Department has been instructed to compute and pay your dues less any liabilities due to the company. Your final dues will be calculated as follows;

- 1. Salary up to and including 16th May 2014*
- 2. All your pension dues up to 16th May 2014*
- 3. Twenty one [21] outstanding leave days*
- 4. 30 days pay in lieu of notice*

You remain bound by clause 9 in your employment contract in respect of confidentiality obligations and restrictive covenants.

Please arrange to formally hand over any work and company property to your immediate supervisor. In the meantime I take this opportunity on behalf of management to wish you well in your future endeavors.

Yours faithfully

MUEMA MUINDI

MANAGING DIRECTOR

10. From this letter, no reason was given for the termination of the Claimant's employment. The Respondent's line of defence is that the Claimant's employment contract allowed for termination without assigning any reason. That is the old law. Section 43 of the Employment Act, 2007 now requires an employer to have a valid reason for terminating the employment of an employee and this is irrespective of the provisions of the employment contract. In fact, an employment contract that derogates from this law is null and void to the extent of the derogation. The Court therefore finds that the termination of the Claimant's employment was unlawful and unfair for want of substantive justification.

11. In addition, Section 41 of the Employment Act, 2007 requires that an employee facing disciplinary action be given adequate opportunity to defend themselves. There was no evidence that the Claimant was afforded any such opportunity and the termination was therefore also procedurally unfair.

Remedies

12. Having found the termination of the Claimant's employment unlawful and unfair, I award him six (6) months' salary in compensation. In making this award, I have taken into account the Claimant's length of service as well as the Respondent's conduct in the termination transaction. In tabulating this claim, I have adopted the salary figures presented by the Claimant which were not controverted by the Respondent. The claim for certificate of service was abandoned during trial.

13. Ultimately, I make an award in favour of the Claimant in the sum of Kshs.900,000.00 being the equivalent of six (6) months' salary.

14. The Respondent will pay the costs of this case. The award amount will attract interest at court rates from the date of the award until payment in full.

It is so ordered.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 19TH DAY OF FEBRUARY 2016

LINNET NDOLO

JUDGE

Appearance:

Mr. Makori for the Claimant

No appearance for the Respondent