



REPUBLIC OF KENYA

EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO.138 OF 2015

(Before D. K. N. Marete)

JUSTIN ONYISI MANGERA.....CLAIMANT

VERSUS

HOTEL DADOS.....RESPONDENT

JUDGMENT

This matter was originated vide an Ammended Memorandum of Claim dated 17th June, 2015. It does not disclose any issue in dispute on its face.

The respondent vide an Ammended Response to Claim dated 21st July, 2015 denies the claim and prays that the same be dismissed with costs to herself.

The claimant's case is that he sues the respondent as the administrator of the estate of Daniel Omare trading as Hotel Dados. It is his further case that his employment was terminated by the respondent on 7th December, 2013 after a stint of four (4) years in service. At the time of such termination, he earned a salary of Kshs. 13,000.00. The claimant's further case is that his services were terminated without notice or disciplinary process or even pay. This rendered him economically impotent.

The claimant's other case is that on 7th March, 2013, the respondent lodged a malicious complaint at the Kisii Police Station whereas the claimant was arrested and charged in Kisii Criminal Case No. 246 of 2013. Later, he was acquitted of all the charges under Section 210, Criminal Procedure Code, Chapter 75, Laws of Kenya.

The claimant further submits and avers that his termination was contrary and in violation of S. 35, 41, 44, 45, 49 and 51 of the Employment Act, 2007 and is also an abrogation of his constitutional rights. This inaction by the respondent was unlawful, unwarranted and threatens the employment rights and fundamental freedoms of workers and denies the worker their right to earn a living is discriminative and violates the rights of the Claimant contrary to the Constitution of Kenya.

He prays as follows;

(i) Claims/prays for terminal dues as follows:

(a) Terminal dues:- Last Gross Salary x 15/30 x 2 ½ years.

<i>i.e</i> 13,000 x 15/30 x 2 ½	= Kshs. 16,250/=
(b) Leave days not taken for 2 years (13,000 x 2)	= Kshs. 26,000/=
(c) Compensation under Section 49 (c)	
Gross salary x 12 months – 13,000 x 12	=Kshs. 156,000/=
(d) One month's Gross salary in lieu of notice	= Kshs. 13,000/=
	TOTAL
211,250/=	= Kshs.

(e) Certificate of Service

(ii) Costs and interest.

(iii) Any other relief this Honourable court may deem fit to grant.

The respondent's case presents a defence comprising of a general denial of the claim and puts the claimant in strict proof thereof.

The matter came to court variously until the 7th June, 2016 when it was heard *inter partes* with the parties testifying in favour of their respective cases.

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 cause?

The 1st issue for determination is whether the termination of the employment of the claimant was wrongful, unfair and unlawful. At the hearing on 7th June, 2016 the claimant testified in support of his case. He reiterated his pleadings and claim and prayed that the court adopts this as his version of the claim.

He also briefly narrated the events on the day of his termination of employment by testifying that on this date he was picked from his office by a Mr. Opiyo of Kisii Police Station. He was subsequently arraigned in court on charges of theft. As the matter was proceeding in court, he reported to his place of work but was denied access. He was told to go home. The matter ultimately died and he was discharged of the charges.

On cross-examination, the witness thrashed out issues on the authority and signature of his letter of employment and clarified on the current name of the respondent. He reiterated that Hotel Dados and Dados Hotel are the same and this is the respondent's business.

The respondent called DW1- Richard Joshua Omari in defence. He testified that he operates Dados Hotel which is registered in the name of Daniel Omari Ongari. He testified that he had never made a documented payment to the claimant or issued him with a letter of appointment and neither had he ran any other hotel or even Hotel Dados.

He further testified that he made a complaint on 7th March, 2013 whereby the claimant was arrested and has not seen the claimant ever since termination of his services. His further testimony on cross-examination is that it is Dados Hotel which made a complaint against the claimant. The hotel now runs as

Dans Hotel. He closed by testifying that the respondent is not owed a farthing.

The claimant's written submissions vouched for a believable version of the sequence of events leading to his termination of employment. It is also their submissions that the respondent admitted making a criminal complaint against the claimant and has no explanation as to how the claimant left employment. This is more so with the respondent's denial of the claimant was ever in his employment and also again saying that he deserted employment.

The evidence of the respondent on the particulars and change of names of the respondent is suspicious. In the absence of cogent evidence in support of good faith and uprightness in this change, I find the evidence of the respondent wanting and unbelievable. It is intended to veil the facts of the matter and is unreliable. I therefore find a case of wrongful, unfair and unlawful termination of employment of the claimant on the basis of evidence and cases of the parties as presented before court.

On a finding of a case of unlawful termination of employment the claimant becomes entitled to the relief sought.

I am therefore inclined to allow the claim and order relief as follows;

- i. One month's salary in lieu of notice = Kshs. 13,000.00
- ii. Leave due but not taken for two years = Kshs. 26,000.00
- iii. Salary for seven days of March, 2013 = Kshs. 3,034.00
- iv. Eight months salary as compensation for unlawful termination of employment Kshs. 13,000.00 x 8 = Kshs. 104,000.00

TOTAL = Kshs. 146,034.00

- v. The respondent be and is hereby ordered to issue a certificate of service to the claimant within 30 days of this judgment of court.
- vi. The costs of this claim shall be borne by the respondent.

Delivered, dated and signed this 30th day of June 2016.

D.K.Njagi Marete

JUDGE

Appearances

Mr. Oumo instructed by M/s Oumo & Company Advocates for the Claimant.

Mr. Nyambati instructed by G.M.Nyambati & Company Advocates for the Respondent.