



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 160 OF 2015

(Before D. K. N. Marete)

IRENE CHEPNGETICH METET.....CLAIMANT

VERSUS

THE COUNTY GOVERNMENT OF KERICHO.....RESPONDENT

JUDGEMENT

This matter was originated by way of a Memorandum of Claim dated 29th June, 2015. It does not disclose the issue in dispute on its face.

The respondent vide a Response to Statement of Claim dated 17th August, 2015 denies the claim and prays that the same be dismissed with costs.

The claimant's case is that she was employed to work for the respondent as a Cleaner II and confirmed to permanent status on 9th August, 2009. She continued in service until the 14th November, 2012 when her services were terminated without notice or reasons for so doing. This was even after demanding a reinstatement.

It is the claimant's further case that this termination was unprocedural and not in terms with redundancy and therefore a violation of the law on employment. The claimant avers that she demanded a recommendation letter but this was declined therefore making it difficult to get another job. Again, she avers that at termination she had not been paid for November and also arrears, leave pay, service and payment in lieu of notice. Further and on enquiry she learnt that her NSSF contributions had not been made in full.

She prays as follows;

- a) *For declaration that the termination was illegal, unlawfully and irregular.*
- b) *That the respondent be condemned in accordance with Section 49 of the Employment Act 2007 Laws of Kenya.*
- c) *Award of general damages for loss of employment and retirement benefits from the date of judgment to the attainment of retirement age.*

d) *Aggravated damages and general damages for the loss of salary, allowances and career.*

e) *That the claimant be paid termination notice pay in full*

f) *Any other relief as the court may deem just and fit.*

The respondent's case is that the claimant was a seasonal employee of the respondent and generally denies the claim and prays that the same be dismissed with costs.

This matter came to court variously until the 4th February, 2016 when the parties agreed on its disposal by way of written submissions. On 15th April, 2016, it was consolidated with the series of 161 of 2015 to 174 of 2015 with this as the lead case.

The issues for determination therefore are;

1. Whether the termination of the employment of the claimant by the respondent was wrongful, unfair and unlawful?
2. Whether the claimant is entitled to the relief sought?
3. Who should pay costs of the suit?

The claimant in her written submissions reiterates her case and opens by seeking reliance on S 47 (5) of the Employment Act, 2007 as follows;

“For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.”

The claimant adduces and annexes the following documents in support of his case;

1. *Letter of confirmation.*
2. *Letter of termination.*
3. *Payslip for June, 2012.*
4. *Letter of demand dated 29th September, 2014.*
5. *Notice of intention to sue the County Government dated 10th October, 2014.*
6. *Letter from labour office dated 11th February, 2013.*

It is her submission that this constitutes evidence of unlawful termination of employment as envisaged by S. 47 (5) above.

She further relies on S. 43 and 45 of the Employment Act, 2007 as follows;

Section 43 of the employment Act on the other hand requires an employer to prove the reason(s) for the termination shall be deemed unfair. These reasons must be the ones which genuinely existed and caused the employer to terminate the services of an employee.

Again,

Under section 45 (2) (a) and (b) of the employment Act, an employer is expected to prove that the

reasons for the termination are both valid and fair if the reasons relate to an employees conduct, capacity, compatibility or are based on operational requirements.

The claimant pleads and submits irrational considerations and grounds for termination that were not based on professionalism but other ulterior motives. She again submits that there is a possibility that the termination was occasioned by the rationalization report of the respondent which brings out issues of redundancy but this was done in contravention of S. 40, Employment Act, 2007.

The respondent in her written submissions dated 29th April, 2016 submits that the claimant was laid off due to operational requirements.

... the claimant herein was laid off due to operational requirement in that the institution found out that some of the workers including the claimant had been irregularly employed and also because the county council was planning to reorganize its operations it gave the workers notice of impending retrenchment plus payment of all their dues. Thus my lord the claimant allegations are baseless and the same ought to be dismissed with costs.

The respondent further submits that the literal interpretations of S 47 (5) of the Employment Act, 2007 rests the onus and burden of proof of unfair termination on the claimant and not otherwise. The claimant has failed to establish this and therefore the fallacy of the claim.

The respondent further justifies the reasons for termination and submits compliance with S 43 and 45 (2) (b) of the Employment Act, 2007 in that the claimant was informed of the termination vide letters dated 14th November, 2012 and also that a committee meeting on 12th May, 2011 resolved staff rationalization for those found to be irregularly employed. She was paid her terminal dues in full.

She seeks to rely on the authority of **Sarah Wanyaga Muchiri V Henry Kathii & another (2014) eKLR** Justice Abuodha N. J cited the Lord Denning's decision in the earlier case of **British Leyland UK Ltd V. Swift (1981) IRLR**

... it is clearly shown that the respondent did not breach any constitutional right as well as those of employment or subjecting anyone to slavery as claimed by the claimant. The claimant was employed as seasonal employee and after proper investigations it was found that their employment was done irregularly, thus their services was terminated as an operational requirement after due notification.

The respondent justifies the termination on the basis of the rationalisation exercise and also the irregularity of the employment of the claimant. Apart from the annexure of the letter of termination which is brought in by the claimant, the respondent does not adduce evidence of the meetings coming up with the rationalisation policy or decision or even demonstrate the alleged irregularity of the claimant's employment. The reasoning and argument of the respondent is therefore hanging and cannot stand as the basis for termination. Again, the claimant was not involved in the process of termination therefore making it substantively and procedural untenable in the circumstances. I therefore find a case of wrongful, unfair and unlawful termination of employment and hold as such. And this answers the 1st issue for determination.

On a finding of unlawful termination of employment as above, the claimant becomes entitled to the relief sought.

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

1.

i. A declaration of that the termination was illegal, unlawfully and irregular.

ii. Kshs. 19,005 x 8 months = 152,040.00/=

- iii. General damages = Kshs. 30,000.00
- iv. One month salary in lieu of notice = Kshs. 19,005.00
- v. Aggravated damages = Kshs.40,000.00
- TOTAL = Kshs.241,045.00**

vi. That the respondent be and is hereby ordered to issue the claimant with a certificate of service.

vii. The cost of this claim shall be borne by the respondent.

viii. The cost of the claims in this series shall be met in respect of the lead claim only.

2. Philemon Kirui

- i.
- ii. 8 months salary as compensation for unlawful termination of employment.
- iii. General damages Kshs. 30,000.00
- iv. One month salary in lieu of notice.
- v. Aggravated damages Kshs. 40,000.00
- TOTAL Kshs. 70,000.00 + (ii) and (iv) above.**
- vi. ...

3. Caroline Chepkoech

- i.
- ii. Kshs. 19,005 x 8 months = 152,040.00/=
- iii. General damages = Kshs. 30,000.00
- iv. One month salary in lieu of notice = Kshs. 19,005.00
- v. Aggravated damages = Kshs.40,000.00
- TOTAL = Kshs.241,045.00**
- vi.

4. Samuel Arap Siele

- i
- ii. Kshs. 19,005 x 8 months = 152,040.00/=
- iii. General damages = Kshs. 30,000.00
- iv. One month salary in lieu of notice = Kshs. 19,005.00

v. Aggravated damages = Kshs.40,000.00
TOTAL = Kshs.241,045.00

vi.

5. Hillary Koech

i

ii. Kshs. 19,005 x 8 months = Kshs. 152,040.00/=

iii. General damages = Kshs. 30,000.00

iv. One month salary in lieu of notice = Kshs. 19,005.00

v. Aggravated damages = Kshs.40,000.00

TOTAL = Kshs.241,045.00

vi.

6. Betty Kirui

i

ii. Kshs. 19,385 x 8 months = Kshs. 155,080.00/=

iii. General damages = Kshs. 30,000.00

iv. One month salary in lieu of notice = Kshs. 19,385.00

v. Aggravated damages = Kshs.40,000.00

TOTAL = Kshs.244,465.00

vi. ...

7. Mutai Simon Kiprotich

i

ii. Kshs. 19,385 x 8 months = Kshs. 155,080.00/=

iii. General damages = Kshs. 30,000.00

iv. One month salary in lieu of notice = Kshs. 19,385.00

v. Aggravated damages = Kshs.40,000.00

TOTAL = Kshs.244,465.00

vi. ...

8. Gilbert Kibet Kirui

i	
ii. Kshs. 19,005 x 8 months	= Kshs. 152,040.00/=
iii. General damages	= Kshs. 30,000.00
iv. One month salary in lieu of notice	= Kshs. 19,005.00
v. Aggravated damages	= Kshs.40,000.00
TOTAL	= Kshs.241,045.00

vi.

9. John Bett

i.	
ii. 8 months salary as compensation for unlawful termination of employment.	
iii. General damages Kshs. 30,000.00	
iv. One month salary in lieu of notice.	
v. Aggravated damages Kshs. 40,000.00	
TOTAL	Kshs. 70,000.00 + (ii) and (iv) above.

vi. Certificate of service within 30 days of this judgement of court.

vi. ...

10. Philemon Bett

i	
ii. Kshs. 17,700 x 8 months	= Kshs. 141,600.00
iii. General damages	= Kshs. 30,000.00
iv. One month salary in lieu of notice	= Kshs. 17,700.00
v. Aggravated damages	= Kshs.40,000.00
TOTAL	= Kshs.229,300.00

vi. ...

11. Joseph Maritim

i	
ii. Kshs. 19,385 x 8 months	= Kshs. 155,080.00/=
iii. General damages	= Kshs. 30,000.00

- iv. One month salary in lieu of notice = Kshs. 19,385.00
- v. Aggravated damages = Kshs.40,000.00
- TOTAL = Kshs.241,465.00**

vi. ...

12. Jackline Cherotich

- i.
- ii. 8 months salary as compensation for unlawful termination of employment.
- iii. General damages Kshs. 30,000.00
- iv. One month salary in lieu of notice.
- v. Aggravated damages Kshs. 40,000.00
- TOTAL Kshs. 70,000.00 + (ii) and (iv) above.**

vi. ...

13. Silvester Kipyegon

- i.
- ii. 8 months salary as compensation for unlawful termination of employment.
- iii. General damages Kshs. 30,000.00
- iv. One month salary in lieu of notice.
- v. Aggravated damages Kshs. 40,000.00
- TOTAL Kshs. 70,000.00 + (ii) and (iv) above.**

vi. ...

14. Stephen Kimetto

- i.
- ii. 8 months salary as compensation for unlawful termination of employment.
- iii. General damages Kshs. 30,000.00
- iv. One month salary in lieu of notice.
- v. Aggravated damages Kshs. 40,000.00
- TOTAL Kshs. 70,000.00 + (ii) and (iv) above.**

vi. ...

