



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 81 OF 2015

(Before Hon. Lady Justice Maureen Onyango)

NICHOLAS OJIEMA OKUDOCLAIMANT

-Versus-

EQUATOR BOTTLERS LIMITEDRESPONDENT

JUDGEMENT

The Claimant was employed by the Respondent as a Security Officer on 8th February, 2013. His employment was terminated by letter dated 20th September, 2013. The letter did not state the grounds for termination but cited section 36 of the Employment Act which provides for pay in lieu of notice. The letter of termination also set out the terminal dues payable to the Claimant as follows:-

- (i) One (1) month's salary in lieu of notice.
- (ii) Any Leave due.
- (iii) Days worked in the month up to the date of termination.
- (iv) Service pay at the rate of one month's salary for every completed year of service.
- (v) Pension dues.

The letter further stated that the Claimant would be issued with a certificate of service.

The Claimant's gross salary at the time of termination of employment was shs.55,006/-. The Claimant was paid Shs.138,430 after deduction of income tax in the sum of Shs.50,659.17.

Aggrieved by the termination of employment the Claimant filed this suit alleging unfair termination. He seeks payment of Shs.660,072 and costs being 12 months salary as compensation pursuant to the provisions of section 49 of the Employment Act and costs..

At the hearing of the case the Claimant testified that the reason for termination of his employment was that investigations into the case of some employees in the Respondent's Sales Department who had been accused of planning to cause harm and/or kill the Managing Director of the Respondent was dropped after investigation by the Office of the Director of Public Prosecutions due to insufficient evidence to charge the employees.

Following the abandonment of the Criminal Case the suspected employees were terminated. The

Claimant was also terminated presumably because the threats to the Managing Director's life were viewed as a lapse of his responsibilities as security officer.

The Respondent filed a response to the Claimant's statement of claim denying the allegations by the Claimant. At the hearing the Respondent called one witness BENJAMIN OMONDI OLANDO, RW'1 a Human Resource Assistant with the Respondent who testified that the Claimant was paid his full terminal dues. He testified that the claimant's employment was terminated after the Respondent lost faith in him as it was considered that it was the Claimant's failure to gather sufficient evidence which led to the failure of the case of threats against the employees who threatened the Managing Director's Life.

Findings and Determination

The issue for determination is whether the termination of the Employment of the Claimant was unfair.

The Claimant was not subjected to any disciplinary process before the termination of his employment as provided in section 41 of the Employment Act. The letter of termination does not assign any reason for the termination. This implies that there was no valid reasons for termination and the Respondent failed to comply with fair procedure. The termination was therefore unfair.

The Claimant sought only compensation for unfair termination. The Respondent opposed the payment of any compensation to the Claimant and relied on the decision of the **Court of Appeal (Kisumu) Civil Appeal No.72 of 2014** between **Hema Hospital v Dr. Wilson Makongo Marwa** in which the court stated as follows;

"The compensation which must be made to the wronged party is a payment to offset the financial loss which has resulted from a wrongful act. The primary enquiry for a court is to determine the extent of that loss, taking into account the nature of the unfair dismissal and hence the scope of the wrongful act on the part of the employer. This Court has been careful to ensure that the purpose of the compensation is to make good the employee's loss and not to punish the employer."

The Respondent further relied on the case of **D. K. Njagi Marete v Teachers Service Commission [2013]eKLR** wherein Rika J observed as follows;

"...employment remedies must be proportionate to the economic injuries suffered by the employees. These remedies are not aimed at facilitating the unjust enrichment of aggrieved employees; they are meant to redress economic injuries in a proportionate way."

And later that:

"...in examining what remedies are suitable in unfair employment termination, the Court had a duty to observe the principle of a fair go all round."

The Respondent also relied on **CMC Aviation v Mohammed Noor [2015]eKLR** and **ELRC Cause No.1109 of 2011 - Banking Insurance & Finance Union v Ukulima SACCO Society Limited** where the court awarded compensation of three and one months salary respectively.

The Claimant on the other hand relied on the case of **Engineer Francis N. Gachuri v Energy Regulatory Commission** and **Cosmas Ochieng and 5 others v Equator Bottlers Limited**.

I have considered the submissions of the parties and read the authorities cited. This is a very unfortunate case where the wrath of the Managing Director was directed at an innocent victim simply because his desires to have the employees accused of threatening his life charged failed after the case was dropped by the police. The claimant was not part of the police investigation team and did not deserve to be punished for failure of the case. The Respondent disregarded the law and treated the Claimant in a most inhuman way without regard to fair labour practices.

I find this to be an unusual case where although the Claimant had served for only 9 months, he deserved maximum compensation because of the very inhuman way that he was treated. Indeed the Claimant testified that he felt bitter at the manner in which he was treated. He was not even issued with the letter of termination. He testified that he was just told to clear and leave and the letter was placed in his file. This was not controverted by the Respondent.

I therefore award the claimant 12 months salary as compensation in the sum of Shs.660,072. The Respondent shall also pay the Claimant's Costs. The decretal sum shall attract interest at court rates unless paid within 30 days.

Dated, Signed and Delivered this 14th day of July, 2016

MAUREEN ONYANGO

JUDGE