



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 71 OF 2016

JOHN MATI LAUTANI.....CLAIMANT

VERSUS

**METHODIST CHURCH IN KENYA REGISTERED
TRUSTEES.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday, 1st July, 2016)

JUDGMENT

The claimant filed the memorandum of claim on 22.04.2015 through Mbaabu M’Inoti & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. The claimant be reinstated to his former position as Chief Administrative Officer in Maua Methodist Hospital or in alternative be paid the entire contractual amount of Kshs.5, 400, 000.00.
- b. General damages for unlawful dismissal and breach of Employment Contract.
- c. Costs of the suit.

The respondent filed the defence to the memorandum of claim on 12.06.2015 through Kurauka & Company Advocates. The respondent prayed that the claimant’s claim be dismissed with costs.

By the letter dated 22.06.2014 the claimant was employed by the respondent to the position of Chief Administrative Officer. The appointment was for 3 years from 20.06.2014 to 19.06.2017. The agreement was renewable for a further period by mutual agreement. The notice of renewal was to be in writing 3 months before expiration of the contract period of 3 years. The appointment was subject to probationary period of 6 months after which the claimant’s performance appraisal on the job would be done.

The claimant’s case is that on 16.02.2015 he received the letter dated 16.02.2015 terminating his services. The letter referred to the letter of appointment dated 24.06.2014 and the terms of employment. It stated that following the claimant’s failure to deliver expected performance as stipulated in the appointment letter and probation period details, the claimant’s services had been terminated with immediate effect. The letter further stated that in line with clause 10(a) of the appointment letter, the claimant would be paid dues as follows:

- a. One month’s salary in lieu of notice.
- b. Accrued leave less days already taken.
- c. Accrued gratuity.

The payment was subject to clearance by the chief executive officer or his designated officer and handover.

Clause 10(a) provides as thus, **“10. (a) During the probation, your services may be terminated by either party giving fourteen (14) days notice or one month’s salary in lieu of notice without giving reason. However, after confirmation the services may be terminated by either party by giving one (1) month’s notice or one (1) month’s salary in lieu of notice.”**

The claimant’s case is that the termination of his employment was unfair because it was without cause or valid reason; and the letter was by the Presiding Bishop done unilaterally without involving the Hospital Board of Management charged with appraising the claimant.

The respondent’s case was that the claimant’s employment was terminated because the claimant failed to deliver the expected performance as per the letter appointment dated 24.06.2014. Further, the claimant’s performance appraisal was poor due to poor performance, poor service delivery, reduced income, lack of staff motivation and supervision due to the respondent’s failure to exercise due diligence and skill as per the terms and conditions of the contract of employment. The respondent pleaded that it was willing to pay the claimant’s accrued leave less days taken, one month pay in lieu of the termination notice, and accrued gratuity.

The parties agreed that the suit be determined on the pleadings and documents on record and the parties filed their respective submissions. The court has considered the documents, the pleadings and the submissions and makes findings as follows:

1. The probationary period of six months lapsed on or about 20.12.2014. The termination was 16.02.2015. The termination was outside the probationary period and in so far as clause 10(a) relates to termination of a probationary period, the same did not apply.
2. The respondent’s case is that the claimant’s services were terminated due to poor performance. Under section 41 of the Employment Act, 2007, termination on such grounds required a notice and a hearing. The same has not been shown to have been invoked. Further, the respondent has not showed that the claimant failed to perform as was agreed and such reason for termination is found invalid under section 43 of the Act. The court returns that the termination was unfair for want of a valid reason and procedure of a notice and a hearing.
3. There were no submissions made for the claimant urging for reinstatement and the court returns that the claimant surrendered that prayer.
4. The respondent has submitted to pay **Kshs.140, 000.00** for 21 leave days and the same is awarded accordingly. The claimant is to be paid accordingly.
5. As submitted by both parties the claimant is entitled to one month pay in lieu of the termination notice making **Kshs.200, 510.00**.
6. Clause 4(d) of the appointment letter stated that gratuity will be paid by the employer at 28% of the employee’s basic salary at the end of the contract. In this case the contract ended on 16.02.2015. As submitted for the respondent, **Kshs. 227, 238.00** for gratuity will meet the ends of justice in this case.
7. The court has found that the termination was unfair. The claimant had over 28 months to continue in employment and he had served for 8 months of the 3 years’ fixed term contract. The claimant did not contribute to his unfair termination. He was keen to continue in employment. Taking into account all those factors and balance of justice, the claimant is awarded 10 months’ gross salaries under section 49(1)(c) making Kshs 227, 160.00 times 10 being **Kshs.2,271,600.00**.
8. All the amounts awarded except gratuity to be subjected to applicable income tax deductions in the usual manner.

In conclusion judgment is hereby entered for the claimant against the respondent for:

1. The declaration that the termination of the claimant’s employment by the respondent was unfair.
2. The respondent to pay the claimant **Kshs.2, 612, 110.00**, less income tax, plus **Kshs. 227, 238.00** for gratuity, and to pay by 01.09.2016 failing interest at court rates to be payable thereon till full and final payment.
3. The respondent to pay the claimant’s costs of the suit.

Signed, dated and delivered in court at Nyeri this Friday, 1st July, 2016.

BYRAM ONGAYA

JUDGE