



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. 178 OF 2013

CONSOLIDATED WITH CAUSE 1830 OF 2013

1. LUCY MUTHONI GAKUO

2. DENNIS OMONDI LELA.....CLAIMANTS

VERSUS

GREEN FUTURE LIMITED.....RESPONDENT

JUDGMENT

1. The Claimants filed suit on 7th February 2013 in respect of the 1st Claimant and 15th November 2013 for the 2nd Claimant. The Claimants averred that they were employed by the Respondent in the capacity of Front Office Manager and acting Assistant Technical & Maintenance Officer respectively. The 1st Claimant averred that her services were unlawfully terminated on 25th October 2011 with immediate effect while the 2nd Respondent resigned from his position in November 2012. It was averred that the Respondent refused, failed, and/or ignored to pay the Claimant their salaries and final dues. The Claimants sought unpaid salary, payment in lieu of leave not taken, admission of liability for use of credentials, balance of contractual salary for the period due. The Claimants also sought costs of the suit and interest on the sums claimed and any other relief the Court may grant.

2. The Respondent did not enter appearance in spite of service. The 1st Claimant testified on 28th October 2014 and stated that she was a receptionist for the Respondent and worked from 1st September 2008 till her termination. She testified that she earned Kshs. 30,000/- and was on probation for 3 months. The Claimant stated that she was on maternity leave when the termination was given. she sought unpaid salary of Kshs. 480,000/-, maternity leave 120,000, ordinary leave 96,000/-, interest and costs of the suit.

3. The 2nd Claimant testified on 28th October 2014 as well. He testified that he was a telecommunications technician and worked for the Respondent from January 2007 and resigned on 30th November 2012 as he had not been paid salary from May 2012 till November. His salary was 200,000/- per month and the amount owed in terms of salary was 1,400,000/-. He stated that he had not gone on leave in the 5 years. He thus sought salary for 7 months, pending leave days, damages for the use of his credentials to obtain licences in other countries and companies and interest as well as costs of the suit.

4. The Claimants filed submissions reiterating their claims. The 1st Claimant relied on the case of **Bernard Ngugi v G4S Security Services Ltd [2013] eKLR**. She sought payment of salary arrears, unpaid maternity leave, unpaid ordinary leave as well as the balance of the contract to the tune of Kshs. 480,000/-. The 2nd Claimant sought the salary arrears of 1,400,000/- as well as unpaid leave amounting to 800,000/- and 6 million for the use of his credentials.

5. It is clear these 2 suits ought not have been consolidated. They are as similar as a donkey and a cow. Lucy Muthoni Gakuo the 1st Claimant was a receptionist and earned Kshs. 30,000/- and at time of dismissal the sum had been increased to 40,000/- a month. She claims she was not paid for some months. In her Statement of Claim she averred that she was dismissed and the reasons given for her dismissal were not known to her. She attached her dismissal letter dated 25th October 2011. In the letter signed by the GM Administration Annette Otunga, the Respondent stated that the Claimant could be dismissed for any conduct that would bring her position in the company into disrespect. The letter in the material part stated as follows:-

Based on this information, please consider this as our one months notice to terminate your services effective today's date 25th October 2011. Please note that your services have been terminated on the basis of company law which does not allow inter office relationships. The main reason we discourage inter-officer/colleague relationships is because we feel that, in most cases these relationships tend to interfere with the performance of either individuals. On the other hand, confidential matters tend to be compromised in the process. In your case, we were subjected to some embarrassment when Dennis's wife called some senior managers including the Chief Executive requesting for intervention from our side. While this may be a personal matter, management was involved by the said calls.

As management, it's our moral obligation to ensure that both our employees and families interests are protected and well taken care of. Under the prevailing circumstances, we feel that it would not be right for us to let you continue working with us as this may continue causing us a lot of embarrassment. We strive to provide a conducive working atmosphere for all our employees. You will appreciate that your relationship caused quite a stir within and we feel that this is not right and we are sorry that we have to let you go.

The Accounts department has been advised to work out your final dues and we will contact you as soon as that is ready for your collection.

6. The 1st Claimant was from the account in the letter involved in an extra-marital affair with one Dennis whose wife called the management precipitating the dismissal from service. In the demand letter seeking payment there was no mention on unpaid salaries. The only demand was for balance of the contract sum Kshs. 480,000/- and outstanding leave pay of Kshs. 78,333/-. It was clear that her dismissal spoke of one month notice yet the letter indicated expressly that her termination was with effect from the date of the letter. That means that payment of one month in lieu of notice would suffice. She had received a salary increment to bring her earning to the tune of 40,000/-.

7. In the case of Dennis Omondi Olela the 2nd Claimant he sought unpaid salary for May, June, July, August, September, October and November 2012. He earned 200,000/- a month and was thus seeking a sum of 1,400,000/- as unpaid salary and Kshs. 800,000/- as unpaid leave days. He sought payment for the use of his credentials by the Respondent.

8. The 1st Claimant only succeeds as far as her claim for notice pay and unpaid leave goes. While testifying she spoke of Kshs. 480,000/- owed to her. She also indicted that she was not paid while on maternity leave and was owed 120,000/- and ordinary leave 96,000/- plus severance pay of 179,600/-. None of these figures were in her pleadings. There was no averment that she was seeking these sums except for the outstanding leave days and leave allowance for leave accrued up to 25th October 2011. Her loss is therefore the quantified leave dues of Kshs. 78,333/-. She is also entitled to Kshs. 40,000/- as notice pay.

9. The 2nd Claimant sought various sums but only managed to prove non-payment of salary and leave dues. He earned Kshs. 200,000/- and is entitled to Kshs. 1,400,000/- and leave dues of Kshs. 800,000/-. He failed to prove the use of his credentials as all he attached were his certificates and licences from CCK issued to him to operate as a technician and maintenance. In the premises I will dismiss the claim for damages for the unauthorised use of his credentials by the Respondent.

10. The Claimants have been largely successful against the Respondent and I will award costs on the consolidated cause alone. That is to say the costs will apply as if there was only one suit filed. The Claimants are also entitled to receive interest on the sums due at Court rates from date of judgment till payment in full.

Orders accordingly.

Dated and delivered at Nairobi this 3rd day of February 2015

Nzioki wa Makau

Judge