



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 44 OF 2014

BONIFACE BANDARI CHIPACLAIMANT

VERSUS

MWADZOMBO JUMBALE & 3 OTHERSRESPONDENT

J U D G M E N T

I N T R O D U C T I O N

1. The Plaintiff filed this suit before the Principal Magistrate court on 4/6/2010 before the same was transferred to this court on 19/12/2013. The suit seeks for reinstatement to employment and in the alternative general damages for wrongful dismissal plus salary arrears of ksh.7600 per month from December 2009 upto the time judgment.
2. The defendants on the other hand have denied any employment relationship with the plaintiff or any alleged wrongful dismissal of the plaintiff from employment. In the alternative the defendants have averred that the plaintiff was only employed on probationary terms and was lawfully dismissed for his misconduct.
3. When the suit came up for hearing on 21/10/2014, the parties agreed to rely on the pleadings, documents and the written statements filed and dispose of the suit by written submissions.

CLAIMANTS CASE

4. The claimant's written statement is dated 20/4/2011. He explained that he was employed by the defendants on 4/3/2009 as an accounts clerk for ksh.7500 basic salary per month. He was to serve a 3 months probation after which he was to be confirmed. After successfully completing his probation, he was never issued with any confirmation letter despite his persistent follow up with the defendants. When he increased his demand for the confirmation letter, the defendants alleged that a voucher book No. 269 had been lost and ordered all the employees to trace it. When the claimant joined in the exercise of looking for the book, he found the book among the other used old books having been filed away in the bank. To his surprise, the claimant was suspended from work on 6/11/2009 for the lost and found voucher book. On 17/12/2009, he received a letter from the respondents dismissing him from employment for alleged failure to give the correct information concerning the lost and found withdrawal voucher No. 269. He concluded by stating that his notice of intention to sue was ignored by the respondents and prayed for damages aforesaid. He filed the suspension letter, dismissal letter plus salary voucher as his exhibits.

DEFENCE CASE

5. The defendants have filed only one witness statement written by Derrick Derri Kashindo filed in court on 17/10/2014 who said that he is the manager of Chasimba Sacco Society Limited since 2007. He confirmed that the claimant was employed as an Accounts clerk by the said Sacco in March 2009 on Probation terms. He explained that the Plaintiff was entrusted with the duty of safe keeping of all the books of accounts including receipt book No. 269.
6. According to the defence witness, receipt book No. 269 went missing and the matter was reported to him by the loans officer Mr. Nyamawi Mwamuye. In response the respondents ordered all the workers in the bank to look for the book. On the third day it is alleged that the watchman reported that the claimant had recovered the missing receipt book and returned it to the shelf. On 6/11/2009, the claimant was suspended until 17/12/2009 by the defendants after he failed to explain where he got the missing book. On 17/12/2009, the claimant appeared before the respondent's Board but again he could not explain himself forcing the Board to extend his suspension until such a time as he would give true information about the lost and found withdrawal voucher. According to the defence witness, the claimant was never dismissed but it is him who decided not to return to work and filed this suit instead.

ANALYSIS AND DETERMINATION

7. After carefully perusing the pleadings, statements, exhibits and the written submissions, it is clear that the claimant was employed by the respondents jointly and severally on behalf of the village bank. He was therefore never employed by the Chasimba Savings and Credit Cooperative Society Ltd, because it was registered only on 3/10/2012 long after the separation of parties herein and after this suit filed. There is also no dispute that the alleged dismissal letter dated 17/12/2009 was not a dismissal letter but an extension of the suspension. It is also not in dispute that the reason for the suspension was failure by the plaintiff to explain, where he recover the receipt book No. 269 which had gone missing. It is also not in dispute that the claimant was never paid any salary during the whole period of his suspension. The issues for determination are whether the claimant was wrongfully dismissed by the defendants and whether the reliefs sought should issue.

Wrongful dismissal

8. As observed above, the alleged dismissal letter was only an extension of the plaintiff's suspension. The court therefore believes the statement by Mr. Kashindo for the defence when he says that the claimant was never dismissed but voluntarily failed to return to work. The court therefore makes a finding that the claimant terminated his employment when he filed this suit on 4/6/2010 instead of complying with the condition of the suspension letter dated 17/12/2009.

RELIEFS SOUGHT

9. In view of the finding above that the employment contract was terminated by the claimant, the prayers for reinstatement or damages for the dismissal is declined. In any event, the village bank is no longer in existent. It is clear from the certificate of registration that it was transformed into Savings and Credit Cooperative Society (SACCO) with a separate legal personality. Consequently, the claimant's employment in the Chasimba village Bank cannot be given back. The claimant is however awarded his salary for the period of suspension between 2009 and may 2010 which is 6 months hence $6 \times 7600 = 45600$.

DISPOSITION

10. For the reasons above stated, judgment is entered for the claimant and against the respondents jointly and severally in the sum of ksh.45600 plus costs and interest from the date of the filing suit.

Dated, signed and delivered this 13th March 2014

O. N. Makau

Judge