



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 874 OF 2011

(Before Hon. Justice Hellen S. Wasilwa on 10th June, 2015)

FREDRICK OBUL ALOO.....CLAIMANT

VERSUS

OPERATION G80 LIMITEDRESPONDENT

JUDGMENT OF THE COURT

1. The Claimant herein Fredrick Obul Oloo filed his Memorandum of Claim on 24/5/2012 through the firm of Rachier & Amollo Advocates.

2. The Respondents on their part filed their Memorandum or Response on 6/6/2013 through the firm of Kelvin Mogeni. As a partial consent on this claim, the suit was partially compromised and part payment made in respect of prayers sought. What remains to be determined by this court are issues of damages for unlawful termination plus costs of the suit. The parties agreed to submit on these issues.

3. The Claimant has submitted that the Claimant was employed by the Respondent from 1st February 2011. The contract was fixed term of one year terminating on 31st January 2012 unless otherwise renewed. The Claimant's salary was Kshs.27,500/= paid monthly in arrears.

On 7th February 2011, however, 6 months into the contract, his salary was reduced to Kshs.10,000/= and this is what the Claimant was paid until September 2011 when he was terminated with immediate effect.

4. The termination letter dated 5th September 2011 did not give any reason for the said action. The letter read as follows:

Fredrick Obul Aloo

F&B Manager

Staff No. 1006

C/o Operation 680 Limited

NAIROBI.

5th September, 2011

Dear Fredrick,

RE: TERMINATION OF CONTRACT

We refer to your term contract, the Management would like to inform you that your services with Operation 680 Limited, are hereby termination with immediate effect in accordance with your contract.

You are requested to immediately hand over all company property in your possession given to you by virtue of your employment through normal clearance procedures after which you will be paid your final dues as follows:

- 1. Salary upto 5th September, 2011*
- 2. One (1) month's salary in lieu of notice*
- 3. Nine days on account of leave accrued.*
- 4. Less debts owed to the company if any.*

Yours faithfully

OPERATION 680 LIMITED

Signed

G. HIRANI

DIRECTOR “

5. The Claimants submitted that the termination was unfair and unlawful as per Section 43(1) and 45 of the Employment Act 2001.

They also submitted that the contract was for a fixed term and Respondent had 5 months of his contract to go and should have been paid the remuneration he would have earned had he served the entire contract period.

6. The Respondents on their part argued that the termination was fair in view of the consideration taken by the Respondent guided by Section 49 of Employment Act 2007. They asked court to grant claimant 3 months compensation in this case and not to order for costs.

7. Having considered the submissions of both parties, it is apparent that the Claimant was terminated without valid reasons. This is as expected under Section 43 of Employment Act 2007 which requires that reasons of the termination be given.

Under Section 45(2) termination is also unfair if the employer fails to prove:

“(a) that the reason for the termination is valid;

(b) that the reason for the termination is a fair reason:

i. related to the employees conduct, capacity or compatibility; or

ii. based on the operational requirements of the employer; and

(c) that the employment was terminated in accordance with fair procedure.”

8. In the case of the Claimant reasons were not given. Fair procedure was also not followed. The procedure expected is one provided for under Section 41 of Employment Act:

“(1). Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

(2). Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44 (3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.”

9. That being the case, I find that the termination of the Claimant by the Respondent was unfair and unjustified and I declare it so.

Under Section 12(3) of Industrial Court Act 2011 the court can grant any of the following remedies:

“(3) In exercise of its jurisdiction under this Act, the Court shall have power to make any of the following orders:

i. interim preservation orders including injunctions in cases of urgency;

ii. a prohibitory order;

iii. an order for specific performance;

iv. a declaratory order;

v. an award of compensation in any circumstances contemplated under this Act or any written law;

vi. an award of damages in any circumstances contemplated under this Act or any written law.”

10. I therefore award the Claimant 12 months salary as compensation for unfair termination as contemplated under Section 49(1) (c) of Employment Act.

This = $27,500 \times 12 = 330,000/=$

Less statutory deductions

Costs follow the event and so I also award him costs to be paid by Respondents.

It is so ordered.

Read in open Court this 10th day of June, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Juma for Claimant - Present

No appearance for Respondent