



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 436 OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 3rd June, 2015)

PROTUS ACHEBI MUKHOBELO.....CLAIMANT

VERSUS

MAGNUM ENGINEERS & GENERAL

CONTRACTOR LIMITEDRESPONDENT

JUDGMENT OF THE COURT

1. The Claimant herein Protus Achebi Mukhobelo filed his Memorandum of Claim against the Respondent herein on 22/3/2013 through the firm of Ratemo & Company Advocates. He sought prayers for payment of:

- a) *Salary and overtime arrears of Kshs.339,115.50/=;*
- b) *Severance pay based on salary of Kshs.48,700/=;*
- c) *Damages/compensation for unfair treatment and unlawful termination of employment equivalent to 1 year salary totaling 548,400/=;*
- d) *Interest on withheld sums at court rates (12%) until payment in full.*

The parties engaged in negotiations and recorded a settlement on 12/3/2015 as underpayment of Kshs.339,115/= and agreed costs of 100,000/=. They also agreed to file submissions in respect of severance pay and unfair/unlawful termination. It is therefore in respect of the 2 items that this judgment is being generated.

The Claimant filed his submissions and they state that the Claimant is entitled to both severance pay and damages for unlawful termination of employment.

They cited Section 40 of Employment Act. As per the Claimants letter terminating his services Appendix 3, the Claimant was informed as follows:

“NOTICE TO TERMINATE YOUR SERVICES

We would like to inform you that the company is undergoing structural adjustments and your vacancy is one of those affected.

Kindly note that the company is giving you a notice of 7 days as from 25th September to 2nd October 2012 thereafter your services will no longer be required.

For any other information the same shall be communicated to you.

Thanking you in advance.

Yours faithfully

Signed

Gurmeet Sign

Operations Director “

2. The wording of the letter amounts to a redundancy as defined by Section 2 of the Employment Act which states that:

“Redundancy’ means the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment”.

The Claimants have submitted that the Respondent did not comply with the law before declaring the Claimant redundant.

The Respondents in their submissions have stated that severance pay is not payable as there was no redundancy. On damages they submitted that is also not payable as the current order had taken care of that.

3. I have considered the submissions of the parties. As discussed above the wording of the termination letter to the claimant is proof that he was declared redundant.

The law on redundancy is found at Section 40(1) of Employment Act 2007 which states as follows:

“(1) An employer shall not terminate a contract of service

on account of redundancy unless the employer

complies with the following conditions:-

(a) Where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;

(b) Where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;

(c) The employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;

(d) Where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has

not placed the employee at a disadvantage for being or not being a member of the trade union;

(e) The employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;

(f) The employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and

(g) The employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service."

4. In the case of the Claimants the law as stated above was not followed. He was given 7 days notice of the redundancy instead of the 1 month notice. His severance pay was also not paid to him since the procedure set out was not followed. I find that the redundancy was unfair and unlawful and I therefore find for Claimant and order that he be paid as follows:

(1) 1 month salary in lieu of notice = 48,700/=

(2) Severance pay = 15 days for each year worked being $15/30 \times 48700 \times 3$ years = 73,050/=

(3) 12 months salary as damages for unlawful redundancy = $12 \times 48700 = 621,450/=$

TOTAL DUE = 670,150/=

The rest of the judgment will be as per the consent of the parties being:

(1) 339,115/= as overtime arrears.

(2) 100,000/= as costs.

Read in open Court this 3rd day of June, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Ratemo for Claimant - Present

No appearance for Respondent