



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2070 OF 2011

HUMPHREY MAINA KARIUKI

JAMES CHEGE GITHUKU

JAMES OCHIENG RANDO

SAMSON KIPROTICH MAIYO.....CLAIMANTS

VERSUS

TELEPOST INVESTMENT CO-OPERATIVE

SOCIETY LIMITED.....RESPONDENT

JUDGMENT

1. The claimants herein were declared redundant by the respondent on 8th January, 2004 and paid their terminal dues. Prior to declaration of redundancy they were between September, 2003 and January, 2004 interdicted following a break in at the respondents premises where some items were stolen and fraudulent activities alleged to have been taking place.
2. According to the claimants, their interdiction was malicious and unlawful as they were not involved in the alleged burglary.
3. The claimants further complained that upon declaration of redundancy they were paid 3 months salary in lieu of notice per each complete year of service instead of 6 months as stipulated in Revised Terms and conditions for Management Staff Scales 1-6 for 1988 and 2000. They further complained that upon lifting of the interdiction, they were never paid their half salary for the period they were under interdiction.
4. The claimants therefore asked the Court to make an order that accounts be taken as between them and the respondent concerning their terminal benefits due on account of redundancy. They further ask the Court to order that such amount as shall be found due to them as unpaid balance of terminal dues calculated under the respondent's terms and conditions of service for management of staff (scales 1-6) (1998 and 2000) be paid to them.
5. The defendants in their defence filed on 21st April, 2004 denied that the interdiction was unlawful or was in any way in breach of any express or implied terms of contract. The respondent

denied that the claimants were entitled to six months' notice period or payment in lieu thereof. According to the respondent the claimants were paid in accordance with Revised Terms and Conditions applicable which in this case was Revised terms and conditions for 2003.

6. When this matter came up before me on 10th February, 2015 I directed that since the only issue in controversy seemed to be the formula and the correct documents to be used in calculating the claimants terminal benefits and the documents relied on were filed before the Court, the parties should file their submissions and let the Court decide the issue. Only the claimants filed submissions.

7. Counsel for the claimants submitted that the claimants interdiction and redundancy was done in contravention of Revised Terms and Conditions of Service for Management Staff Scales 1-6 (2000 edition) which provided for 6 months' notice or salary in lieu of notice incase of redundancy and payment of 3 month's salary for every completed year worked or any part thereof. Counsel further submitted that in paying the claimants their dues, the respondent omitted to pay them half salary withheld during the 5 months they were interdicted.

8. According to Counsel, the respondent may have mischievously applied the Revised Terms and Conditions for Management Staff Scale 1-6 (2003 Edition) which had not been implemented at the time the claimants were terminated. Counsel further submitted that the respondent seem to have applied the contents of a circular dated 5th June, 2003 which required employees that were willing to take an optional redundancy to apply. The claimants' herein did not take up the offer for optional redundancy hence their benefits could not be calculated based on the same circular but as per the Revised Terms and Conditions of Service for Management Staff. Scales 1-6 (2000 Edition).

9. As observed earlier, the respondent herein never filed submissions, witness statements or documents in support of its averments contained in the defence. This however does not lessen the onus of proof placed by law on the claimants to prove their claims.

10. The copy of Revised Terms and Conditions of Service for Management Staff Scales 1-6 (2000 Edition) exhibited by the claimants and which they seem to contend applied to them is not signed by anyone. Page 14 of the said documents lists names of a Mr. J. K. Cheruiyot as National Chairman, M. K. Chutha as National Vice Chairman, B.O Musuku as National Treasurer and P. L. Orango as Honourable Secretary. They neither signed nor dated the document. Further the document relates to "Posta investment Co-operative Society Limited" and the name "Posta" crossed by pen and replaced by "Telepost" whenever it appears in the document.

11. In contradistinction, the 2003 edition of the Revised Terms and Conditions of Service for Management Staff Scales 1-6 is specific to the respondent, signed and dated by M. K. Chutha as National Chairman, B.O Musuku as National Vice Chairman G. K. Rwenji as National Treasurer and J. O. Ochanda as Honourable Secretary. The Court therefore finds it quite unsafe to rely on the 2000 edition as urged by the claimants. Further, the claimant's herein were interdicted from duty on 29th August, 2003 and subsequently terminated on account of redundancy on 8th January, 2004. It is therefore difficult to understand why reliance should be placed on a 2000 document while there is a subsequent one for 2003 one and more so when the former does not on the face of it look complete and reliable.

12. In conclusion the Court therefore orders that accounts be taken as between the plaintiffs/claimants and respondent in respect of terminal benefits due to the claimants on declaration of redundancy based on Revised Terms and Conditions of Service for Management Staff Scales 1-6(2003 edition) and such amount as shall be found unpaid be paid to them.

13. The Court further orders that the unpaid half of the salary for the five months the claimants were under interdiction be paid to them together with interest at Court rates.

14. The claimants will have costs of the suit.

15. It is so ordered.

Dated at Nairobi this 17th day of July 2015

Abuodha J. N.

Judge

Delivered this 17th day of July 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge