



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 789 OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 19th October, 2015)

ROBERT NYONGESA.....CLAIMANT

VERSUS

THE SACCO SOCIETIES REGULATORY AUTHORITY.....1ST RESPONDENT

**HARAMBEE CO-OPERATIVE SAVINGS & CREDIT SOCIETY
LIMITED.....2ND RESPONDENT**

RULING

1. The application before Court is the one dated 22/5/2015 filed by the Claimant Applicants herein seeking orders that:

- 1. THAT this Honourable Court do issue an Interlocutory Order of a Declaration that the Claimant is entitled to his salary and benefits while on suspension.***
- 2. THAT this Honourable Court do issue an Order directing the 2nd Respondent as employer of the Claimant to pay compensation of full salary the entire period of suspension twelve (12) months from the date of suspension to date of termination of employment contract Kshs.2,877,216/= and gratuity that was to be paid on expiry of the contract 13th May 2012 amounting to Kshs.1,172,685/= both totaling to Kshs.4,049,901/=.***
- 3. THAT costs of this application be in the cause.***

2. The application is supported by the annexed affidavit of Robert Nyongesa herein and on the following grounds:

- 1. That the second Respondent is the Claimant's employer but the Applicant has not been paid his salary from the date of suspension to date of termination of employment contract and the gratuity payment that was to be paid on 13th May 2012 at expiry of his previous contract.***
- 2. That 1st Respondent by letter dated 23rd November 2012 recommended the Claimant's suspension and the 2nd Respondent by its letter dated 28th November 2012 suspended the Claimant for three (3) months and asked him to show cause why he should not be disciplined for***

alleged misconduct.

3. That the Claimant responded by a letter dated 8th January 2013 to show cause why he should not be disciplined for alleged misconduct.

4. That no verdict was delivered to the Claimant at expiry of suspension period of three (3) months. The Claimant's suspension ought not to have exceeded 28th February 2013 before a verdict was communicated to the Claimant.

5. That the 1st Respondent by its letter dated 18th January 2013 demanded a comprehensive response within 30 days and irregularly extended the suspension by 60 days.

6. That the Claimant ran impatient of waiting indefinitely for the verdict and filed the Industrial Dispute on 24th May 2013.

7. That no disciplinary action or criminal proceedings have been commenced against the Claimant within the three (3) months of suspension or subsequently upto date.

8. That the 2nd Respondent by its letter dated 15th November 2013, communicated the decision of its board of directors meeting of 13th November 2013 terminating the Claimant's employment with effect from 17th January 2013 termination cannot be retrospective.

9. That since the illegal termination of the Applicant's employment contract, the Applicant has remained unemployed and is unable to meet his financial obligations.

10. That the Applicant has Sacco loans with the 2nd Respondent that have remained unpaid and his guarantors are now being threatened with attachment and sale of their property to repay the Applicant's loans.

11. That it is in the interest of justice that pending the hearing and determination of the main suit the Court be pleased to Order, compensation of the withheld salary for the entire period the Claimant has been on suspension and gratuity be paid.

12. That the Applicant shall continue to suffer greatly in the event that the Orders prayed herein are not granted.

13. That is only fair and just that this Honourable Court to the aid of the Claimant.

3. The Applicant has deponed that he was employed by the Respondents since May 2003 to 15th November 2013 as Manager, Information & Communications Technology (ICT) Department earning a gross salary of Kshs.239,768/= . He last received his salary in October 2012 from the 2nd Respondent (RN I is a copy of his payslip).

4. He was suspended from employment on 28th November 2012 (R2) but has never received any verdict of any investigations made against him. He avers that on 15/11/2013, the Respondents Board of Directors terminated his services with effect from 17/1/2013 retrospectively.

5. The Applicant contends that he is entitled to payment of his gratuity for the contract that ended on 13/5/2013 amounting to Kshs.1,172,685/=.

6. The Respondents filed their replying affidavit to this application on 14/6/2015. The affidavit was sworn by one John Mwaka, the Ag. Chief Executive Officer of the 1st Respondent. He deponed that the Applicant's application is an abuse of the Court process. They aver that the Claimant's application dated 9/6/2014 was dismissed, with the Court stating that the Claimant's claim for gratuity and withheld

salaries ought to await the full trial of this case.

7. They therefore submit that this claim is resjudicata. Without going into further merits of this application, I notice that indeed the Applicant had filed an application dated 9/6/2014 and orders sought are similar to these current ones. The application was dismissed.

8. In seeking to file this application, the Applicant is attempting to reproduce matters already deliberated upon and settled by Court. This is an abuse of the Court process. I find this application not merited and I dismiss it with costs to the Respondents.

Read in open Court this 19th day of October, 2015

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Miringu for 1st Respondent – Present

Wafula Simiyu for Claimant – Absent

Federation of Kenya Employers for 2nd Respondent – Absent