



REPUBLIC OF KENYA

IN THE EMPLOYMENT LABOUR AND RELATIONS COURT AT MOMBASA

CAUSE 260 OF 2014

W W WCLAIMANT

VERSUS

TELKOM KENYA LIMITED.....RESPONDENT

J U D G M E M N T

Introduction

1 The claimant is a person of unsound mind. He filed this suit in the High Court on 24.5.2004 through his brother and the next friend. He amended the plaint on 22.6.2004. The suit basically seeks declaration that the claimant was wrongfully dismissed and that he ought to have been retired on medical grounds. In addition he prays for accrued and terminal dues.

2 The respondent filed her defence on 18.6.2004 denying liability for wrongful dismissal of the claimant. On the contrary she averred that the claimant absented himself from duty without permission for months and when she served him with a letter to explain his absence, he ignored it. It is the defence case therefore that the dismissal of the claimant was lawful and in accordance with the laid down procedure.

3 The suit was heard on 7.5.2010 when the claimant testified as Pw1 and called Dr. Eric J Maina as Pw2. The defendant never called any witnesses. After the hearing the claimant filed written submissions.

Analysis and Determination.

4 There is no dispute that the claimant was employed by the respondent as clerical officer on 28.2.1985. There is also no dispute that Pw1 was earning a monthly salary of Ksh 22,705 and that he worked up to 29.5.2003 when he was dismissed on ground of desertion. The issue for determination is whether the dismissal of the claimant was wrongful and whether reliefs sought should be granted.

Wrongful Dismissal.

5 Pw1 explained that the claimant developed mental illness from 1990 and continued on and off until 8.10.2002 when he was admitted at the Nyeri Provincial General Hospital. He was discharged on 16.10.2002. That on 30.10.2002, the respondent wrote a letter to the claimant stopping his salary and demanding for explanation of his absence from work. That the claimant responded to the demand letter on 8.11.2002 and enclosed the medical documents. That the respondent wrote back on 29.5.2003 terminating the claimant's services. The reason cited was desertion from duty.

6 According to Pw1, the said dismissal was wrongful because the claimant had a valid medical reason

for his absence. That the employer should instead have retired the claimant on medical grounds because she had known the claimant's medical illness since 1990. The illness was confirmed by pw2 who treated the claimant on 8.2.1995 and later examined him on 25.2.2004. According to pw2, the claimant was suffering from Bipolar disorder, a major recurrent mental illness. That by 25.2.2004, the claimant was very depressed and weepy and in need of mood stabilizers.

7 The evidence by Pw1 and pw2 was not rebutted because the respondent never adduced any evidence in defence. Consequently the court finds that the claimant has proved his case on a balance of probability. The claimant has proved that after receiving the letter from the respondent dated 30.10.2002, he responded by his letter dated 6.11.2002 annexing medical notes to prove that he was admitted in hospital for medical illness. That such illness was a valid reason to warrant retirement as opposed to summarily dismissal. This court is in agreement with the claimant that summarily dismissal was too harsh considering that the claimant was mentally ill and also the fact that the claimant had served for 17 years. That in any event, the respondent could still have terminated the appointment by notice, or on medical ground after he had obtained a certificate from a medical Board.

Reliefs

8 In view of the foregoing finding, the court makes declaration that dismissal of the claimant was wrongful and it is reduced to a retirement on medical grounds and the respondent is directed to pay or cause to be paid the claimant's retirement dues according to his employment contract and as undertaken vide the dismissal letter dated 29.5.2003. The court will however not award salary for the period after 8.10.2002 because there is no evidence that the claimant went back to work or that he was given sick leave by the employer or his doctor. He will however get one month salary in lieu of notice being Ksh 22,705 because the court has already made a finding that the dismissal was wrongful. The dismissal was too harsh and not justified in the circumstances. The claim for 2 years leave and education shares of Ksh 21,600 was not proved.

Disposition

9 For the reasons stated above judgment is entered for the claimant declaring that the dismissal of the claimant was wrongful and it is reduced to a retirement on medical grounds and directing the respondent to pay or cause to be paid the retirement dues to the claimant in addition to Ksh 22,705 awarded in lieu of notice. The claimant is also awarded costs plus interest from the date of filing the suit.

Signed, Dated and Delivered at Mombasa this 13th day of November 2015.

ONESMUS MAKAU

JUDGE

13.11.2015

Coram

Before Justice Onesmus Makau

C/Assistant -

For the Claimant:

For the Respondent:

Court

Judgment delivered in their presence/absence in open court.

ONESMUS MAKAU

JUDGE