



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 971 OF 2013

(BEFORE HON. LADY JUSTICE HELLEN S. WASILWA ON 14TH DECEMBER, 2015)

ANDREW MWANJALA MWANDAWIROCLAIMANT

VERSUS

SDV TRANSAMI KENYA LIMITEDRESPONDENT

JUDGMENT OF THE COURT

1. The Claimant herein Andrew Mwanjala Mwandawiro filed his Memorandum of Claim on 26/6/2013 through the firm of Osundwa & Company Advocates. The Claimant contends that since 6th September 2005, he was an employee of the Respondent as security manager having been so employed vide his letter of Appointment dated 6/9/2005 Reference Number NBO/1211/05 at a gross salary of 60,000/= per month until his summary dismissal on 27th June 2007.
2. The Claimant avers that he served the Respondents diligently and in the process earned a bonus payment and on 10/6/2006 he was given a new assignment and confirmed to the position of Shunting Administration in addition to his Security Management position. His salary was also increased to 86,400/= His claim is that, he was employed by the Respondent on 11/10/2007 and served Respondent on Permanent and Pensionable terms as a Procurement Officer.
3. It is the Claimant's position that his contract (page 5) provided for arbitration in case of a dispute between him and the Respondents. In this case therefore he tried to engage the Respondents to engage in arbitration before filing his case but they didn't agree. The communication between the Claimant and Respondent on the issue of arbitration is at pages 20 to 27 of the Claimant's documents. The Claimant's attempt to resolve the matter through arbitration failed and hence he is seeking redress before Court.
4. It is the Claimant's case that he was summarily dismissed and no reasons were given for the action which he terms malicious on the part of the Respondent. He avers that he had not committed any acts to warrant summary dismissal.
5. In Cross examination after giving his evidence in chief, the Claimant stated that the contract paragraph 5 had provided that he could be terminated after giving 1 months notice. He admits he was paid 1 months salary in lieu of notice. He avers that the contract never stipulated reasons of termination be given but that rules of natural justice ought to be followed.
6. The Respondents filed their response to the Memorandum of Claim on 12th August 2013 through the firm of Muriu, Mungai & Company Advocates. They aver that any actions and/or termination

of the Claimant's employment by the Respondent at the material time was justified, fair and based on lawful grounds and also within the applicable provisions of law and within the terms and conditions of the employment contract and/or letter of appointment executed by the parties herein.

7. They therefore aver that this claim is vexatious, incompetent and has been brought in bad faith. They have also submitted that this claim is also time barred but I will not belabor this issue as it was determined by Hon. J. Makau in his Ruling dated 27th May 2013 when he stated that the claim is not time barred and could be filed before the end of day on 27th June 2013.
8. The Respondent have also indicated that they had valid reasons to terminate the Claimant's services given that he absented himself from duty and also failed, ignored and neglected to perform his work assignments, tasks and obligations without any justified cause.
9. I have considered the evidence adduced by both parties plus their submissions herein. The issues for determination is as follows:

1. ***Whether the termination of the Claimant by the Respondent was wrongful and unlawful.***

2. ***What reliefs the Claimant is entitled to if any were valid reasons to warrant***

10. I would 1st point out that the Claimant was dismissed on 21st June 2007 and so the operational law in determining whether his dismissal was lawful or not is the repealed Employment Act Cap 226 Laws of Kenya.

11. Under the contract of employment between Claimant and Respondent dated 19/9/2005, Clause 5:- it was stated as follows:-

“After confirmation, the company shall be entitled to termination of your services by giving you one months notice or pay you one months salary in lieu of notice. You may do likewise should you wish to leave the Company”.

12. Section 14(1)(iii) of the Cap 226 (now repealed):-

“Where the contract is to pay wages or salary periodically at intervals of or exceeding one month, a contract terminable by either party at the end of the period of twenty-eight days next following the giving of notice in writing”.

13. Under Section 16:-

“Either of the parties to a contract of service to which paragraph (ii) & (iii) of Subsection (5) on the proviso thereto, of Section 14 applies, may terminate the contract without notice upon payment to the other party of the wages or salary which would have been earned by that other party, or paid by him as the case may be in respect of the said period of notice required to be given under the corresponding provision of that subsection”.

14. In the case of the Claimant, it is apparent that the Respondents adhered to the strict provisions of the contract and the law by basically giving him 1 months salary in lieu of notice and terminating the contract.

15. It is clear that under the repealed law, the Respondents were not required to assign any reasons before terminating any contract. That was the law. What about simple rules of natural justice?. The principles of natural justice provide that a man should not be condemned unheard. Though the contract between the Claimant and Respondent did not provide for a hearing and this was reinforced by the law, the fact that the Claimant was not informed of the reasons for termination and that he was not given an opportunity to defend himself against allegations against him was in clear breach of rules of natural justice and in particular not being heard.

16.I thereof find that the dismissal of the Claimant was unfair and unjustified.

17.I therefore award the Claimant 12 months salary as damages for unlawful termination = 12 x 86,400 = 1,036,800/=.

18.The Respondents will pay costs of this suit.

Read in open Court this 14th day of December, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for the Respondent

No appearance for the Claimant