



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 203 OF 2013

DAVID NJOROGE MUIRU.....CLAIMANT

-VERSUS-

**ELSA LIMITED T/A ELSAMERE CONSERVATION
CENTRE.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 21st March, 2014)

JUDGMENT

The claimant filed the memorandum of claim on 27.06.2013 through Mwangi Wahome & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. **Kshs.860,607.00.**
- b. **Costs of the suit.**
- c. **Interest on (a) and (b) above at court rates from the date of filing the suit until payment in full.**

The respondent filed the response to the statement of claim on 17.07.2013 through Hamilton Harrison & Mathews Advocates and prayed that the claimant's claim be dismissed with costs. The reply to the response to statement of claim was filed for the claimant on 19.08.2013.

The case was heard on 26.02.2014. The claimant gave evidence to support his case. The respondent's witness was Sam Mwashimba (**RW**), the General Manager.

The claimant was employed by the respondent with effect from 3.03.2002 as an accounts assistant. From 2002 to 2006, the claimant was a unionisable staff. Effective 2006, the claimant was promoted to management and he ceased to be a member of the union. Under the contractual terms, the claimant would serve for three years and earn a gratuity at 20% for each completed year of service. The first term contract expired on 31.3.2010 and another one was due on 1.04.2010. The parties did not sign it but the claimant continued working for 27 months into the new contract up to 30.05.2012 when he was terminated. The last contract dated 29.2.2012 was to run from 1.04.2010 to 31.03.2013 but was never signed.

On 30.5.2012, the claimant was called to the respondent's accounts manager's office. The manager had 8 letters including the claimant's termination letter. The letter alleged the claimant had disclosed information (that was not stated in the letter) to the union officers. After receiving the letter, the claimant was escorted out of the respondent's premises by the respondent's security personnel. It was the claimant's testimony that prior to termination, he was not given any notice or a hearing. At termination, his gross pay was Kshs.43,465.00.

The claimant testified that he was not aware of any demands that the union officials had made that certain management officers of the respondent be removed. He denied being party to e-mails that were conveyed to the management.

The claimant stated that he was entitled to only 7 months leave pro-rate and not as claimed. He was paid gratuity except for the 27 months of his last service.

RW testified that 2 persons, the claimant and the accounts manager worked in the accounts department. RW's testimony was that the reason for the claimant's dismissal was that he disclosed confidential information contrary to the terms of the contract of employment. The basis of the disclosure according to RW was that e-mails received by the respondent's management raising complaints were in detail on accounting issues, the accounts manager had been targeted for removal as per the e-mail and therefore by elimination, it could only be the claimant who had disclosed the information.

The court has considered the evidence on record, the pleadings and the submissions. The issues for determination are whether the claimant's dismissal was fair and whether the claimant is entitled to the remedies as prayed for. The court makes the following findings:

- a. It is obvious that the claimant was not given any notice of misconduct or hearing before the termination. The court finds that the dismissal was unfair under section 41 of the Employment Act, 2007. The court has considered that the claimant had served the respondent for several years and had a legitimate expectation to continue in employment. The reason for removal has not been shown to have been established to exist at the time of termination. Under section 49(1) (c) of the Act, the court finds that 12 months compensation will meet the ends of justice. The claimant is awarded **Kshs.521,580.00** at Kshs.43,465.00 gross pay per month.
- b. The parties are in agreement that the claimant is entitled to 7 days leave on pro-rata basis and the claimant is awarded **Kshs.10,141.80** as submitted.
- c. As the dismissal was unfair and without notice, the court finds that the claimant is entitled to **Kshs.43,465.00** being one month pay in lieu of termination notice and as submitted.
- d. The court finds that the claimant is entitled to 20% gratuity for the 27 months served at Kshs.37,209.00 per month and as per the contract making **Kshs.200,928.60**.

In conclusion, judgment is entered for the claimant against the respondent for:

- a. The respondent to pay the claimant **Kshs.776,115.40** by 1.05.2014, in default, interest to run at court rates from the date of judgment till full payment.
- b. The respondent to pay costs of the case.

Signed, dated and delivered in court at **Nakuru** this **Friday, 21st March, 2014**.

BYRAM ONGAYA

JUDGE