



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT KISUMU

CAUSE NO. 152/2013

(Before Hon. Justice Hellen Wasilwa on 14th March, 2014)

DR. SIMON S. MUNGU CLAIMANT

-VERSUS-

THE CHAIRMAN BOG, FRIENDS LUGULU MISSION HOSPITAL..RESPONDENTS

JUDGMENT

The claimant Dr. Simon S. Mungu filed his statement of claim on 10.6.2013 through the firm of Omayya & Co. Advocates. He told court that on 1.3.2012, he was employed by the respondents on a 3 year renewable contract as a medical doctor at a monthly salary of Ksh 200,000/=. On the strength of the claimant's letter of appointment, he was seconded to the Patient Support Centre at the hospital's Comprehensive Care Centre as the project doctor in-charge as an added advantage.

However on 28.2.2013, the claimant told court that the respondents without any reason terminated his services as per **App 2**- minutes of the board meeting held on 28.2.2013. He wrote a letter protesting his dismissal on 14.3.2013 and was informed that there was a board meeting in which his project would be discussed. He appeared at the board meeting and insisted that his termination was unprocedural but he was told that the decision was final. He contacted his advocates who wrote a demand letter to the respondents dated 28.3.2013 (**App 5**).

The claimant told court that he had a contract with respondents who deployed him at the Comprehensive Care Centre (CCC) but this contract was with the hospital and so even if he was not working at the Comprehensive Care Centre his contract with the hospital remained. He had written **App 7** wishing to continue working at the Comprehensive Care Centre on secondment but the decision to sack him was made even before he applied for the secondment. He now seeks to be paid what was due to him for the remainder of the contract equivalent to Ksh 4.2 m plus leave for 3 years = Ksh 600,000, total being Ksh 5.8m.

In cross examination the claimant told court that he didn't sign a separate contract for Comprehensive Care Centre Department at the pleasure of Hospital Management. He told court that the board sat on 25.2.2013 after he had been sacked. He told court that he didn't vacate the hospital premises since he was sacked. He now works at Aga Khan Hospital since July 2013.

The respondent on the other hand filed their response on 24.6.2013 through the firm of Bulimo & Co. Advocates. They also called 2 witnesses who told court that though the contract period was three years, the claimant's appointment was subject to annual performance evaluation and therefore needed renewal

on a yearly basis. That in fact the claimant applied for the renewal which the board rejected.

The witnesses also told court that the claimant's request for consideration to have his contract renewed was rejected on account of failure to perform his duties professionally, negligence of duty, incompetence and disrespect to other members of staff.

Having heard the parties the issues for consideration are as follows:-

1. **Whether the contract of claimant was renewable yearly or was a three year renewable contract with respondent or with Comprehensive Care Centre.**
2. **Whether the respondents unlawfully terminated the contract with claimant.**
3. **What remedies the claimant is entitled to.**

The contract between the claimant and respondent is exhibited by **Exh 1** which shows that he had been employed on a three year renewable contract. The letter is signed on 1.3.2012 by the director of administration of the hospital. He was further seconded to the Patient Support Centre (PSC) at the Comprehensive Care Centre as the Project Doctor in Charge with effect from 1.3.2013. The letter informed him as follows:-

“Please note that you remain a hospital employee and answerable to the hospital management on behalf of the Board of Governors and Hospital Management.”

At no time did the claimant enter a contract with Comprehensive Care Centre. The contention that the contract was one year renewable is not correct.

The second issue - given that the contract was 3 years renewable one and it was defeated by respondent for whatever reason, implies that the respondents unlawfully and unfairly terminated the contract with claimant. He was not accorded any hearing as envisaged under Section 41 of Employment Act which states:-

“(1) Subject to Section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reasons for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

(2) Notwithstanding any other provision of this part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under Section 44 (3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within sub – section (1) make.”

Further the allegations levelled against claimant were not proved. It is therefore the finding of this court that the respondents unfairly and unlawfully terminated claimant's contract.

The last issue - the claimant told court that he left respondent's employment and was only employed by the Aga Khan Hospital Kisumu in July 2013. Since his dismissal on 25.2.2013, he was without a job for 5 months which he needs to be compensated for = **Ksh 200,000 X 5 = Ksh1,000,000 M.**

I also award claimant 1 year leave allowance

= Ksh 200,000

I also award claimant 1 month salary in lieu of notice,

= Ksh 200,000

TOTAL = KSH 1,400,000

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He should also be issued with a certificate of service. Respondents to pay costs of this suit.

HELLEN WASILWA

JUDGE

14/3/2014

Appearances:-

Omayya for claimant present

N/A for respondents

CC. Wamache