



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 145 OF 2014

DENNIS NGUGI.....CLAIMANT

-VERSUS-

FLAMINGO HILL CAMP LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 26th September, 2014)

JUDGMENT

The claimant filed the statement of claim on 12.03.2014 through Maritim Omondi & Company Advocate. The claimant prayed for judgment against the respondent for:

- a. A declaration that the termination of the employment of the claimant is contrary to the Employment Act, 2007.
- b. A compensation of Kshs.294,822.00.
- c. Costs of the suit.
- d. Interest on b), c), d) above at court rates.
- e. Any other relief this honourable court may deem fit to grant.

The response to the statement of claim was filed for the respondent on 10.06.2014 through Kiplenge & Kurgat Advocates. The respondent prayed that the claimant's suit be dismissed with costs.

The claimant gave evidence to support his case. The respondent's witness (RW) was Francis Waweru Mwangeka, the respondent's assistant manager at the material time.

The claimant was employed by the respondent as a maintenance assistant on 1.08.2013 with core duties of undertaking painting.

On 19.02.2014, the claimant was assigned to paint the houses at the residence of the respondent's director in Nairobi which also served as the respondent's offices. The director inspected the claimant's work on 20.02.2014 and concluded that it was shoddy. The claimant in his testimony testified that during the inspection the director shouted at him and also abused him. The claimant decided to travel back to his Nakuru residence where the respondent owned the Flamingo Hill Camp and where the claimant was ordinarily deployed to work. On 21.02.2014, the claimant reported at the camp, explained to the manager what had transpired in Nairobi and the claimant continued to work.

On 28.2.2014, the internal memo terminating the claimant's employment was delivered to the claimant. The termination was on account of the poor performance with respect to the painting as assigned at Nairobi. The termination letter referred to the claimant's letter of apology addressed to the respondent and dated 24.02.2014 which had stated thus, **"I owe you a sincere apology for my unpleasant**

misconduct; it was never my intention to create such an awkward and uncomfortable situation. I hope that I can be of assistance in correcting my mistake and resolving the matter. While I have caused this unpleasant experience, I am able to see where I went wrong. I believe acquiring this insight will allow me to learn, grow and prevent similar issues in the future. Please give me another chance, a repeat of that will never happen.”

The **1st issue** for determination is whether the termination was unfair. It was urged for the claimant that there was no notice and hearing before the termination as envisaged in section 41 of the Employment Act, 2007. The court has considered the letter of apology and finds that the claimant admitted the allegations leading to his dismissal. In view of that admission, the court further finds that a notice and a hearing would not have served any useful purpose and the respondent was entitled to dismiss the claimant. Accordingly, the dismissal was not unfair.

The **2nd issue** for determination is whether the claimant is entitled to the prayers made in the statement of claim. It is not disputed that upon termination the claimant was paid one month salary in lieu of termination notice, 16 days leave, 5 days off days, travelling allowance and 21 days worked in February 2014. The court has found that the termination was not unfair. In the circumstances, the court finds that all the claimant’s prayers shall fail.

In conclusion, the claimant’s suit is dismissed with costs.

Signed, dated and delivered in court at Nakuru this Friday, 19th September, 2014.

BYRAM ONGAYA

JUDGE