



IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 1987 OF 2012

PATRICK AMIMO.....CLAIMANT

VERSUS

INTERNATIONAL PEACE SUPPORT TRAINING UNITRESPONDENT

JUDGMENT

By a Memorandum of claim dated 3rd October, 2012 and filed in court on 4th October, 2012 the Claimant states that he was employed by the Respondent, a research and training Institution focusing on regional peace support capacity building, on 27th March 2012. The contract was for a fixed term of two years. He was initially to serve a probation period of 3 months ending on 30th June 2012. The Claimant's designation was In Charge Facilities, Embakasi. His salary was a consolidated sum of Kshs.85,407.58.

The Claimant's employment was terminated by letter dated 14th August 2012. The grounds of termination were that:

- He lacked organizational capability that led to poorly organized event.
- He unprocedurally certified incomplete works as being successfully and satisfactorily done while well aware that they were not.
- He altered approved specifications and designs by the IPSTC tender committee for the supply of dining chairs to HPSS in contravention of procurement rules and regulations.
- He lacks foresight and pro-activeness leading to some works being done in emergencies and unsatisfactorily.
- He sometimes bypasses and does not brief his immediate superior the Commandant, thus keeping him out of picture on what is happening.

The claimant alleges that the termination was unilateral and unfair for failure to comply with the provisions of section 41 of the Employment Act 2007. The Claimant seeks judgment against the Respondent as follows:

1. Damages for unlawful dismissal and one month's salary in lieu of notice,
2. Costs
3. Interest

The Respondent filed a reply to the Memorandum of claim on 21st November 2012 through the office of the Attorney General. The Respondent denied the claim by the Claimant.

The case was heard on 4th September, 2013 and 12th May 2014. The parties thereafter filed written submissions.

The Claimant was represented by Mrs. Ligunya instructed by Ligunya Sande & Associates while the Respondent was represented by Mr. Fedha instructed by the Attorney General's Office.

The Claimant testified on his behalf while the Respondent called 2 witnesses, RW1, Judith Mwelu Ndolo, an Accountant with the Respondent and RW2, Patrick Maina Gichuhi, the Respondent's Head of Finance.

The Claimant's case is that his contract was terminated on some work and ethics concerns in relation to procurement. The first was related to repair of an access road within the facility while the second related to procurement of chairs for the dining hall. He stated that the dining hall chairs were procured at the headquarters and the person responsible for giving tenders was the procurement officer in Karen. He testified that his responsibility was to recommend the needs of the facility, draft a certificate of request and then pass it on to the Commandant to approve, give to the Chief Officer to hand over to procurement. Headquarters would then engage the supplier.

On the murram road the claimant stated that there were 2 certificates. One was signed by the Commandant while he was prevailed upon by the Commandant to issue the second certificate. He testified that he was opposed to signing the certificate as some parts of the road were incomplete. He further testified that he was not the one who supervised the work.

The Claimant testified that his working relationship with the Commandant was not cordial as the Commandant interfered with his terms of reference. The Claimant testified that he raised the issue of interference with the Chief of Staff who referred him to the Head of Finance and Administration Ms. Jane Kiarie but Ms. Kiarie did not take any action even after the Claimant raised the issue three times.

The Claimant testified that his contract was terminated on 14th August 2012 while in the process of appraisal. He was supposed to be appraised by the Commandant. He filled his portion of the appraisal form and handed it over to the Commandant who was supposed to call him to discuss and agree on his rating. His appraisal was done on 14th August 2012, which is the date he received his letter of termination.

The Claimant testified that he was never called for a hearing before termination and further that he was not on probation as stated in the letter of termination.

RW1 testified that she handed over the letter of extension of probation to the Claimant but the Claimant did not write to acknowledge receipt of the letter. She admitted that the letters confirming receipt of extension of probation by other employees were written after this case was filed in court.

RW2 testified that the Claimant was appraised and was not recommended for employment after probation. He further testified that the Claimant was paid Kshs.106,371.20 as terminal dues but after deductions the net amount was Kshs.64,046.

The issues for determination are:

1. Whether or not the Claimant's probation was extended.
2. Whether the Claimant's termination was lawful.
3. Whether the claimant is entitled to the reliefs sought.

1. Whether or not the Claimant's probation was extended

The Claimant's case is that he was never issued with a letter of extension of his probation while RW1 testified that she personally handed over the letter of extension of probation to the Claimant on 15th June 2012. She relied on letters of confirmation of receipt of letters extending probation by other staff. She admitted that the letters of confirmation, including her statement that she handed over the letters of extension to the Claimant were written in October 2012, after the claimant's case was filed in court.

I find that there is no proof that the Claimant was informed of extension of his probation period. The letters of confirmation filed by the Respondent including that of RW1 were written after the Claimant filed his suit. A letter of extension of probation is intended to notify an employee on his shortcomings to enable him improve so that he can be confirmed. The letter is useless if not brought to the attention of the intended recipient.

I therefore find that the Claimant's probation period expired on 30th June 2014 and he was not on probation at the time of termination of his employment contract.

2. Was the termination of the Claimant's employment lawful

Having completed the probation period, the Claimant was entitled to be informed of the reasons for termination of his employment and subjected to a disciplinary hearing as provided in Section 41 of the Employment Act. This was not done.

The Claimant's contract further provided for notice of one month both during and after probation. The claimant was however only issued with 14 days notice.

The Claimant alleges that he was discriminated. There is no evidence of discrimination either in the Claimant's testimony or in his submissions.

Section 44(2) provides that no employer has the right to terminate a contract of service without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.

I find that the termination of the Claimant's contract was unfair for failure to comply with Section 41 of the employment Act as well as failure to give the Claimant the notice stipulated in his contract of employment.

3. Whether the Claimant is entitled to the reliefs sought

The claimant prayed for the following:

- a. Notice
- b. Damages
- c. Costs
- d. Interest

a. Notice

Having been unfairly terminated the Claimant is entitled to notice as provided in Section 49(1) (b) of the Employment Act.

I award him Kshs. 85,407.58/= being one month's salary in lieu of notice.

b. Damages

The Claimant did not specify what damages he was seeking.

Having been terminated unfairly he is entitled to compensation as provided in Section 49(1) (c) of the Employment Act. Due to the short period served by the Claimant which was less than 6 months I award him 1 month's salary as compensation in the sum of Kshs.85,407.58.

(c) Costs and interest

The Respondent will pay the Claimants costs of the suit and the decretal sum will attract interest from date of judgment.

Orders accordingly.

Read in open Court this 7th day of October, 2014

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

In the presence of:

Mwaura holding brief for Ligunya for Claimant

No appearance for Respondent