



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT KISUMU

CAUSE NO. 141 OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 26th November, 2014)

FREDRICK ODHIAMBO MADOTE.....CLAIMANT

-VERSUS-

INSTEEL LIMITED.....RESPONDENTS

JUDGMENT

The claimant herein Fredrick Odhiambo Madote filed his memo of claim on 3.6.2013 through the firm of Otieno Ragot & Co. Advocates. He too like a colleague in Cause No. 140/13 contend that he was employed by the respondents on Sales Department since 2005. He was initially a casual worker. In 2010, he was employed on permanent basis (*App 1*). He was declared redundant on 28.3.2013. He avers the right procedure was not followed before he was declared redundant. He avers that he was not given any notice and even the labour officer was not even informed.

At the time he was earning Kshs 19,000/=. He prays he be compensated for unfair termination and also seeks reinstatement. He contends that there was a time he was given a show cause letter but which he replied to. The same was not related to the redundancy.

The respondents on their part filed their response on 24.7.2013 through their advocates Siganga & Co. Advocates. It is their contention that they never acted maliciously in declaring claimant redundant. It is their position that they acted procedurally, legally and with economic foresight in terminating the claimant's employment considering all staff requirements. They aver that they even computed all claimant's benefits which he refused to collect. They further aver that before the redundancy, the claimant was engaged in activities deleterious to the business of respondents.

Having heard the parties and upon consideration their submissions, the issues for determination are:-

- 1. Whether the action of respondents in declaring claimant redundant was justified and fair and,**
- 2. What remedies if any, the claimant is entitled to.**

On 1st issue, S. 40 of Employment Act 2007 is clear on how termination on account of redundancy is to be effected. The Section states as follows:-

“40(1) An employer shall not terminate a contract of service on account of redundancy unless

the employer complies with the following conditions—

(a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;

(b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;

(c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;

(d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;

(e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;

(f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and

(g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.”

In the case of claimant he was not a member of a trade union and so S. 40(1) (b) was to apply to him. The respondents has not shown that this was done. Even the criteria used in selecting him and not others is not demonstrated. The respondents have alleged some disciplinary action against the claimant which too has not been demonstrated. It therefore follows the redundancy meted out in claimant was illegal and unjustified.

The claimant has asked court to order he be reinstated.

Under S. 12 of Industrial Court Act, reinstatement is one remedy that this court can grant. In relation to this prayer the respondents did not seem to reply. They do not seem to have any problem with the same. I therefore order as envisaged under S. 49(4) of Employment Act 2007:-

- 1. Reinstatement of claimant to his position in the alternative re-engagement within 30 days from today without interference of any accrued salary rise and/or promotion.**
- 2. Payment of all salary due and pending since the illegal redundancy on 28.3.2013 to-date being Kshs 19,000 X 20 = 380,000/= less statutory deductions.**
- 3. Respondents to pay costs of this suit.**

HELLEN S. WASILWA

JUDGE

26/11/2014

Appearances:-

Mrs Onyango for claimant present

Siganga for Respondents present

CC. Wamache