



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 234 of 2011

REBECCA NYOKABI GITHU CLAIMANT

-VERSUS-

MEDICINS SANS FRONTIERS (FRANCE).....RESPONDENT

JUDGEMENT

The Claimant filed a Memorandum of claim on 22nd February 2011 claiming that her summary dismissal was illegal and unfair and claiming terminal benefits, damages and compensation. The Claimant filed an amended Memorandum of Claim on 4th October 2011.

The Respondent filed Statement of Reply to the claim on 28th April 2011 and an Amended Reply on 30th November 2011. The parties were heard by Hon. Justice Mukunya (as he then was) on 13th March, 2012. The file was allocated to me and I proceeded with the hearing of the last defence witness on 11th October 2012.

The Claimant testified on her behalf. Her case is that she was unlawfully dismissed from employment by the Respondent. She testified that she was employed in 2002 and was dismissed in 2010. The reason for her dismissal was that she failed to attend to a patient. She stated that on 11th October 2010 she was in a meeting when she was alerted that there was a patient at the gate, which was closed because of the meeting. That by the time she reached the gate the patient was being carried away and she did not examine the patient and resumed the meeting. Later on she was asked by the field coordinator why the patient was not attended to and she responded that she was attending the meeting and that the patient was moved away before she got to the gate.

The following day she was called to a meeting by the field coordinator and asked to record a statement. She was then given a suspension letter and asked to report back on 18th October 2010 for the hearing of her case. At the hearing she was asked to give her side of the story. The field coordinator was typing the proceedings. She was given a copy of the minutes after the meeting. The meeting took about 2 hours. She reported back to the office on 19th October as she had been directed to and was given a dismissal letter. Her last salary was shs.1138,465/14 as per payslip (Claimants' Appendix 3). She alleged that she did not have a good relationship with the Field Coordinator and the incident of 11th October was used as an excuse to sack her.

The Respondent called 4 witnesses, Charles Waithaka, a guard manning the gate on the material day, Joel Mukaya, a driver of the Respondent, Hessin Kerrow, a clinical officer employed by the Respondent and Jecinta Hurst, the field coordinator of the Respondents Mathare Project.

The Respondents case is that there was a meeting on 11th October 2010 and the Claimant instructed RW1 and a colleague manning the gate to close it and call her if there is any emergency. At around 2.30 p.m. a patient was brought at the gate and the Claimant was called. She came to the gate, saw the patient who had been moved across the road. She directed that the patient be taken to a nearby clinic. She did not examine the patient. At around the same time the Field Coordinator Jecinta Hurst was just approaching the clinic. She saw the commotion and the patient slumped on a wall opposite the clinic with blood on his nose and mouth and his clothes. Since she had no gloves to examine the patient she rushed into the clinic and asked RW3 to go and examine the patient. RW3 rushed out and found the patient being carried away. On examination he certified that the patient had just died. The field Coordinator inquired from the gate why the patient had not been taken into the clinic and was informed that those were the instructions of the Claimant. She asked everybody who had witnessed the incident including the Claimant to write statements, held a meeting with the Claimant to find out why the patient was not given emergency treatment and then decided to suspend the Claimant pending further investigations.

The suspension letter which was issued on 15th required the Claimant to report to the Field Coordinator at their Parklands office to be informed of the outcome of investigations and have an opportunity to present her comments on 18th October 2010. She was informed that she could attend the meeting with a colleague.

The Claimant attended the meeting and was allowed to present her case after being informed of the results of the investigations. She was accompanied to the meeting by her husband.

At the end of the meeting she was given a copy of the minutes of the meeting and advised to report back to Parklands office on 19th October 2010 when she was handed the dismissal letter.

The Respondent argues that it was justified in dismissing the Claimant for refusing to give emergency medical treatment to a patient against the Internal Regulations of the Respondent, the respondents Charter which requires it to provide aid to people in need, victims of natural and manmade disasters, wars and civil wars, irrespective of race, religion, ideology or politics. The Respondent further submitted that the Claimant was guilty of neglect of duty.

The issues for determination are 2: whether the dismissal was illegal and unfair and whether the Claimant is entitled to the remedies sought.

For dismissal to be fair, an employer must show that there was valid reasons to dismiss an employee and that the procedures used was also fair. This is provided for in 45 for the Employment Act.

In the present case, the Claimant testified that she instructed the guards at the gate to close the gate and call her in the event of an emergency, that she was called when the patient was brought and that she did not examine the patient. **RW1 Charles Waithaka** testified that he called the Claimant when the patient was brought to the clinic. The patient was bleeding from the mouth and nose. He sent for the Claimant who came and saw the patient and instructed him to tell the people who had brought him to take him elsewhere as there was a meeting at that clinic. **RW4 Jecinta Hurst** also testified that she saw the patient and noted that he was bleeding from the mouth and nose. She ran into the clinic and called **RW3 Hussein Haji** a Clinical Officer to examine the patient.

All these show that this was an emergency case. By failing to examine the patient the Claimant was indeed negligent. She was the head nurse in-charge of the facility and by denying a patient emergency medical treatment because she was in a meeting, went against the very purpose for which a medical facility is set up.

For this reasons I find that there was valid reason for taking disciplinary action against the Claimant.

The next issue is whether fair procedure was used. The Claimant has testified that she was first called to a meeting with the Field Coordinator, then asked to prepare a statement, suspended for 5 days, and called

for a meeting to be informed of the outcome of the investigations, that she was given an opportunity to present her case in the presence of a colleague, and she was accompanied by her husband.

I find that the Respondent complied with fair procedure in the handling of the disciplinary case against the Claimant.

The Claimant seeks the following remedies:-

- (i) 1 months' salary for every completed year of service.
- (ii) Payment in lieu of notice.
- (iii) Damages for loss suffered as a result of the termination of her research project.
- (iv) Compensation for the entire period she was out of employment.

Section 12 of the Industrial Court Act provides for the remedies which the Court can grant to an employee who has been unfairly terminated. In this case I find that the Claimant's termination was not unfair as there was both valid reason and fair procedure in the handling of her disciplinary case.

I therefore find as follows:-

1. The Claimant having been dismissed lawfully from employment is not entitled to 1 month's salary for every year worked.
2. The Claimant is not entitled to notice as her dismissal was justifiable.
3. The Claimant has not given any evidence in support of the claim for damages from termination of her research project. The claim is therefore dismissed.
4. Prayer for compensation for the period the Claimant has been out of employment is dismissed again because the Claimant has not given any legal basis for the claim.

In the final analysis, the entire claim is dismissed. Each party shall bear its costs.

Orders accordingly

Read in open Court and signed on this 12th day of March 2013.

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE.

In the Presence of:-

Rebecca Nyokabi

_____ for Claimant

Ms. Mathai

_____ for Respondent