



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO.313 OF 2010

PATRICK AMUDALA MWANGALE CLAIMANT

-VERSUS-

CITY COUNCIL OF NAIROBI.....RESPONDENT

JUDGEMENT

By a Memorandum of Claim filed in Court on 24th March 2010 the Claimant alleges wrongful termination by the Respondent and claims the following:-

- (a) The Claimant through deductions, has proved exhaustively, that the Respondent has **NOT** at any stage attempted to resolve this issue of its dependable employee, who now feels betrayed and abandoned;
- (b) In light of the elaborate facts presented in this Memorandum, the priority prayer of the Claimant is **REINSTATEMENT**, at a hire scale probable had the contract not been interrupted.
- (c) In conclusion to the prayer, the Claimant appends the monetary claim contained in the schedule of claims at the end of this Memorandum.

The Respondent filed its Reply to the claim on 21st July 2011 in which they allege that the Claimant voluntarily resigned from employment and the reasons for his resignation had nothing to do with the Respondent, that the resignation was considered at the Councils meeting of 12th September 2006 and accepted, and that the Claimant's attempt to withdraw the resignation letter 5 months after the resignation was declined. The Respondent urges the Court to dismiss the claim.

The parties were first heard by Hon. Justice Isaac E.K. Mukunya who took the testimony of the Claimant on 22nd July 2011 and 28th March 2012. The file was reallocated to me for hearing after the retirement of Hon. Justice Mukunya and with the consent of the parties, I heard the Respondents defence on 30th November 2012.

In his testimony the Claimant stated that he was employed by the Respondent on 15th March 1989 as a trainee constable. He was promoted in 1992 to Training Instructor/Sergeant.

In 1996 he was transferred from training school to investigation where he served until 2006. He had no disciplinary cases except in 1995 when he was accused of absconding duty but was re-instated after investigations. In his duties as investigator he investigated senior officers including his superiors. He resigned in April 2006. The resignation was not voluntary as he was pressured by threats. He was not

paid his terminal dues. His salary was stopped after resignation and he was evicted from the house he was occupying. He testified that he reported the threats to the Deputy Town Clerk Legal Affairs who did not take any action forcing him to resign. He then wrote to the Minister for Local Government and copied to the Labour Commissioner among others. The Labour Commissioner appointed a Labour Officer to handle the dispute but no settlement was reached hence filing the dispute in Court. He prayed for re-instatement and payment of frozen salaries and other allowance as claimed.

The Respondent called one witness RW1 **TOM NYABISA NYATIKA** who is the Respondents Chief Human Resources Officer. RW1 testified that he is in charge of employee relations and was in possession of the Claimant's employment records. He testified that the Claimant was employed in 1989 as a City Askari and rose through the ranks to the position of Senior Inspector. The Claimant had a clear record except for one incident of absconding duty for which he was cleared. That the Claimant tendered a resignation on 11th April 2006 which was accepted by letter dated 12th September 2006, that the resignation was voluntary. That the Claimant was not owed any terminal benefits from date of resignation. That the Respondent did not owe him house allowance, annual leave/uniforms and salary increment. That the restorations of claimants plot No.29 in Umoja Zone 8 is not part of his employment terms. That the Claimant is entitled to pension and NSSF refunds which he has not gone to collect.

In cross examination RW1 stated that the letter revoking the Claimant's resignation as received after the resignation was acknowledged and the Claimant was informed about it. That the Claimant stopped working after the resignation letter and his salary was also stopped. The Claimant is entitled to his pension dues which is with the Trustees of the Pension Fund.

I have considered the pleadings and the evidence on record. The issues for determination are the following:-

- 1) Whether the Claimant's resignation was voluntary or it was constructive termination.
- 2) Whether the Claimant is entitled to the prayers sought.

1. Whether the Claimant voluntarily resigned or was constructively terminated.

There is no dispute that the Claimant resigned from employment by his letter dated 11th April 2006 or that he wrote a letter revoking the resignation on 7th September 2006. It is further not contested that the resignation was accepted by the Respondents letter dated 12th September 2006 and the revocation of resignation was responded to by letter dated 13th November 2006.

A reading of the letter of resignation does not reflect coercion by the Respondent. It does not state that the Claimant reported any complaints to the Respondent about the difficult work situation he was experiencing or that he sought the intervention of the Respondent to enable him continue working. The resignation was to take immediate effect and the Claimant offered to offset the notice paid with his leave days.

I also note that in his letter revoking the resignation the Claimant refers to Council Minute 91 of 11th August 2006 in which his resignation was reported. I agree with the contents of the Respondents letter in response thereto dated 13th November 2006 to the effect that it was too late to cancel the resignation as it had already gone through the relevant council committees. It is therefore not true as submitted by the Claimant that his resignation letter was not acted upon for 5 months forcing him to withdraw the letter.

In any event the Claimant himself stopped working immediately upon delivering his letter of resignation and the withdrawal of the letter was therefore an afterthought.

From the foregoing I find that the Claimant voluntarily resigned and the resignation was accepted

by the Respondent. The claim of constructive termination of employment is therefore without merit and is dismissed.

2. Whether the Claimant is entitled to the prayers sought.

Having found that the Claimant's resignation was voluntary, he is not entitled to any of the prayers sought. He requested in his letter of resignation that his pending leave days be utilized to offset his notice. He also testified that his salary was stopped after resignation. He is therefore not claiming salary for days worked but for payment from May 2006 which is after his resignation.

I have considered the decision of the Court in the case *No.1930 of 2011 JOSEPHAT MUGALO MUHATI –V- CHANDHA INVESTMENT LIMITED AND ANOTHER* and find it not applicable in this case. In the case referred to there was clear intimidation of the Claimant leading to his arrest and the letter of resignation was written after he was arrested by police. In this case the Claimant was never threatened by the employer.

The prayers for payment of benefits from May 2006 after his resignation is without merit and is dismissed.

For the reasons stated above the entire claim by the Claimant is dismissed.

Each party will bear its costs.

Orders accordingly.

Read in an open Court and signed on this 11th day of June, 2013.

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

In the presence of:

_____ **Patrick Amudala Mwangale** Claimant present in person

_____ **No appearance for** _____ Respondent