



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NO. 59 OF 2012

CHRISTINE OBINGACLAIMANT

VERSUS

NYALI GOLF & COUNTY CLUB LTDRESPONDENT

J U D G M E N T

The claimant filed this claim on 17/9/2012 claiming terminal dues and damaged for wrongful termination of his employment by the respondent. The respondent has denied any wrongful termination and termed the demands by the claimant as unreasonable and unconscionable.

When the suit came up for hearing on 8/5/2013, the counsel for the two parties sought adjournments. They returned to court on 22/5/2013 and recorded a partial consent judgment on favour of the claimant in addition to terminal dues and agreed to dispose of the remaining issue of damages for wrongful dismissal by written submissions.

The interim judgment was in terms of:

a. 2 months salary in lieu of notice	86,800
b. salary for days worked in June 2012	28,933
c. pro-rata leave for 7 months	25,317
d. gratuity for 13 years	<u>282,100</u>
 <u>423,150</u>

the issues remaining for determination are:

- a. **Whether the claimants employment was wrongfully terminated**
- b. **whether the claimant is entitled to the damages of ksh.520,800 for wrongful termination.**

To answer the first issue, the court appreciates that a contract is deemed to have been wrongfully terminated if either party terminates it without giving the agreed notice or by giving a notice for a lesser period than the one agreed under the contract.

It follows therefore that the concept of wrongful termination should not be mistaken for unfair or unlawful termination. This is because whereas unfair or unlawful termination concerns itself with breach of statutory obligation(s), wrongful termination on the other hand relates to breach of term(s) or obligations(s) of a contract between the parties.

In the present case, the claimant has accused the respondent of wrongful termination. That means that she is accusing her employer for breach of contract by terminating it without notice. The employment letter produced as annexure 1 by the claimant did not state the period of termination notice. It merely refers to the terms contained in the CBA between her employers Association and the claimant union. The CBA was however not produced and the court had nothing to refer to in order to ascertain the termination notice period.

The court was therefore left with only one option and that is to assume from the consent interim judgment that the notice period was 2 months. That must be what informed the parties in recording the consent judgment. Hence the answer to the first issue is that the dismissal of the claimant amounted to wrongful termination and she admitted it by recording consent judgment aforesaid.

As regards the second issue of the remedy for wrongful dismissal, the court has been asked to award 12 months salary as damages for wrongful termination. The court is however of a different view. It is now trite law that the damages payable to an employee who is wrongfully terminated are the total amount of money he would have earned during the notice period but for the wrongful termination.

Consequently the court finds that the only damages payable for wrongful termination was the 2 months salary in lieu of notice which is covered by the interim consent judgment and no more. The claim for Ksh.520,800/- for wrongful termination is therefore dismissed.

The interim consent judgment recorded by the parties on 22/5/2013 of ksh.423,150 remains the final judgments in favour of the claimants in this suit. The claimant will also have costs and interest from the date of filing the suit.

Orders accordingly.

Signed dated and delivered this 6th September 2013

ONESMUS MAKAU

JUDGE