



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 44 OF 2016

RAYMOND KOMEN

CLAIMANT

v

COUNTY GOVERNMENT OF NAKURU

1ST RESPONDENT

KINUTHIA MBUGUA

2ND RESPONDENT

JUDGMENT

1. Raymond Komen (Claimant) entered into a contract of employment with the County Government of Nakuru Public Service Board on 10 February 2014 to serve as Chief of Staff for a term of 42 months.
2. On 5 January 2016, the 2nd Respondent issued to the Claimant a notice to show cause within 14 days why disciplinary action should not be taken against him. The Claimant responded to the show cause through a letter dated 16 January 2016.
3. The 2nd Respondent through a letter dated 3 February 2016 informed the Claimant of the termination of his employment, and this prompted him to institute legal proceedings on 18 February 2016.
4. At the same time, the Claimant filed an application under certificate of urgency which the Court directed to be served for *inter partes* hearing on 22 February 2016.
5. On 22 February 2016, the parties informed the Court that they had held discussions and the application was therefore abandoned, and that they had agreed to have the Cause determined on the basis of the record and submissions to be filed.
6. The Court gave directions as to the filing of the submissions.
7. On 25 February 2016, the parties filed a written consent to the effect

1. THAT the termination of the claimant as an issue of fact is hereby allowed and the claimant shall not pursue reinstatement to his position as a remedy before this Court.

2. THAT it is further agreed that the Respondent shall pay the Claimant all the dues under the contract executed on 10th February 2014. The amount of the dues payable under the said contract shall be the subject matter of submissions to be filed by counsel for the parties.

3. THAT the dues payable to the Claimant shall be subject only to such deductions that the Respondent can prove to be due to it from the Claimant. Further the dues payable under the contract shall be paid in addition to and without prejudice such other award that may be made under the Employment Act.

4. THAT costs of this suit are hereby agreed at Kshs 200,000 shall be paid by the Respondents.

8. The Claimant's submissions were filed on 25 February 2016 while the Respondents submissions were filed on 29 February 2016.
9. The task of the Court has been made simple because of the consent filed by the parties and the Court will adopt the issues as submitted in the submissions.

Pay in lieu of notice

10. Clauses 4(2) and 8 of the employment contract provided for three months' notice of termination or 1 month salary in lieu of notice.
11. As no notice was given, the Claimant is entitled to the equivalent of 1 month salary in lieu of notice.

Wages for unserved part of the contract

12. The contract was to run for 42 months but it was terminated with 18 more months to run for which the Claimant seeks Kshs 3,604,860/-.
13. The contract had provision for termination before its expiry but on notice.
14. The question of the wages for the unserved period therefore is one of interpretation and application of the law.
15. The Claimant had a legitimate expectation to serve out the entire contract.
16. However, lost prospective income was not one of the heads of claim or relief sought in the Memorandum of Claim, neither does it directly form part of the statutory remedies in section 49 of the Employment Act, 2007.
17. The Court has also discussed this remedy extensively in several decisions such as *Mary Mutanu Mwendwa v Ayuda Ninos De Afrika- Kenya (Anidan K)* (2013) eKLR, and is of the considered view that the Claimant has not placed any material before it to warrant an award under this head.

Gratuity

18. Clause 9 of the employment contract provided for gratuity in the following terms

If this Agreement is terminated otherwise than under the provisions of clauses 7, 8(2) or 8(3) hereof, Mr. Raymond K. Komen shall be granted, at his option which shall be exercised at the time of signing this Agreement, a gratuity of thirty-one per centum of the total basic salary paid to him during the term of his engagement under this Agreement.

.....

19. The Claimant did not resign and therefore clauses 8(2) & (3) are inapplicable.
20. Clause 7 of the agreement is so verbose that it is not easy to comprehend.
21. The Claimant submitted that the gratuity ought to be computed based on income for the 42 months, while the Respondents wanted the gratuity computed for the 24 months served.
22. Equity and fairness demands that the gratuity be computed for the period served of 24 months as suggested by the Respondents.

Compensation

23. The parties agreed that the termination of the employment of the Claimant was a *fait accompli*.

24. The consent by the parties allowed the Court to make any award contemplated by the Employment Act, 2007.
25. Compensation equivalent to not more than 12 months gross wages is one of the primary remedies where Court finds unfairness. However, the remedy though primary is discretionary.
26. Considering that the contract was for 42 months (three years and five months, the Court is of the view that the equivalent of 4 months gross wages would be fair and appropriate as compensation.

Conclusion and Orders

27. Pursuant to the consent filed in Court on 25 February 2016, the Court awards the Claimant and orders the Respondents to pay him

- | | |
|----------------------------------|------------------|
| a. 1 month pay in lieu of notice | Kshs 120,270/- |
| b. Gratuity | Kshs 894,808/80 |
| c. Compensation | Kshs 1,001,350/- |

TOTAL **Kshs 2,016,428/80**

28. The award should be subjected to statutory deductions as required by law.
29. Costs as agreed.

Delivered, dated and signed in Nakuru on this 11th day of March 2016.

Radido Stephen

Judge

Appearances

For Claimant	Mr. Githui instructed by Githui & Co. Advocates
For Respondent Advocates	Mr. Gakinya instructed by Hari Gakinya & Co.
Court Assistant	Nixon



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