



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 6 OF 2019

KENYA UNION OF COMMERCIAL, FOOD & ALLIED WORKERS.....CLAIMANT

VERSUS

RUTUMA FARMERS CO-OPERATIVE SOCIETY LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent for the alleged unfair dismissal of the Grievant Jane Wanjugu Ndugure. The Claimant averred that the Grievant was employed by the Respondent on 8th January 2009 as a secretary manager and she worked well until 24th January 2015 when she was unfairly dismissed from employment on allegations of abuse of office. The Claimant averred that efforts on the part of the Claimant to secure a settlement failed and the matter was reported as a trade dispute, a conciliator appointed by the Cabinet Secretary and upon the conciliator hearing the parties in several meetings, compiled a report and recommended that the Grievant be reinstated. The Claimant averred that it accepted the report on 25th August 2015 and urged the Respondent to reciprocate. The Claimant averred that the Respondent reinstated the Grievant on 25th August 2015, albeit with a demotion and transfer. The Claimant averred that the Grievant obeyed the reinstatement instructions and reported to the Respondent's Ndurutu Factory. However, the representatives of Ndurutu Factory wrote and protested to the Respondent's Chairman for having transferred the Grievant without consultations. The Claimant averred that the Grievant was asked to fill leave forms and proceed on leave. The Claimant averred that on 28th January 2016, 2 days after reporting from leave and a day after a management committee meeting, the Respondent wrote and dismissed the Grievant from employment on allegations of failing to submit PAYE. The Grievant reported the matter to the Claimant whose effort to secure a settlement again did not yield any fruits, a conciliator was appointed by the Cabinet Secretary and after several conciliatory meetings after which the Conciliator recommended reinstatement. The Claimant averred that the Respondent declined to do so forcing the Conciliator to issue a referral certificate. The Claimant averred that the Respondent erred and violated the law by dismissing the Grievant from employment over unproven allegations, without giving her hearing contrary to the rules of natural justice. The Claimant averred that the dismissal was unfair and where in the opinion of the Court reinstatement is not feasible the Claimant prayed for one month's salary in lieu of notice – Kshs. 25,427/-, maximum compensation for 12 months – Kshs. 366,144/-, issuance of certificate of service and costs.

2. The Respondent filed a response to the memorandum of claim and denied that the dismissal of the Grievant was in any way unlawful or illegal. The Respondent averred that the Claimant has *no locus standi* in the matter as there was no collective bargaining between the Claimant and the Respondent. The Respondent averred that the conciliator was biased against the Respondent and in favour of the Claimant and the Grievant hence a lopsided attempt settlement. It averred that the Grievant was sacked for failure to perform her duties as well as insubordination by failing to answer accusations of failure of duty. The Respondent averred that the grievant was a member of a provident fund and her benefits should be derived therefrom. It sought the dismissal of the claim with costs to the Respondent.

3. The Grievant Jane Wanjugu Ndugire and the Respondent's witness testified. The Grievant testified that she was dismissed without being heard and that the KRA issue was not her mistake. She stated that she was not invited for a disciplinary as shown in

the show cause letter and she was also not issued with a warning letter.

4. The Respondent's witness Isaiah Wambugu Kahihu testified that the Grievant was dismissed after reinstatement for not doing her work and also there was an issue concerning KRA for which she was blamed. He stated that he used to sign the cheque for payment to KRA for the taxes but he did not recall being asked to submit PIN and details to KRA. He stated that the Grievant was paid her dues on termination.

5. The Claimant submitted that the parties in dispute have a valid Recognition Agreement and that they are still negotiating the Collective Bargaining Agreement at the conciliation level. The Claimant submitted that after exhausting her compulsory leave days she resumed to work but she was not allocated duties by the Respondent but rather she was issued with a dismissal letter with allegations that she failed to remit PAYE to KRA. The Claimant submitted that the Muster Roll was being handled by the bookkeeper as confirmed by the Respondent's witness hence the allegations were unfounded and misleading. The Claimant submitted that KRA changed the system from manual to digital and the officials were supposed to file with KRA their PIN and ID copies but they never did thus the PAYE could not be paid without those documents. The Claimant submitted that it was wrong for the Respondent to have leveled the issue of KRA on the Grievant yet its officials had not met the requirements. The Claimant submitted that the Grievant was dismissed on allegations which were unfounded and untrue, she was not heard or issued with a notice to show cause and/or a warning letter. The Claimant submitted that the dismissal violated the provisions of the Employment Act. The Claimant prayed that that the court finds for the Grievant and she be granted the reliefs in the memorandum of claim.

6. The dismissal of the Grievant was executed in an oblique manner as she was first sent to the Respondent's Nduru Factory. However, upon reporting the representatives of Nduru Factory wrote and protested the Grievant's transfer which they held was without consultations. The Grievant was asked to fill leave forms and proceed on leave and on 28th January 2016, a mere 2 days after reporting from leave following a management committee meeting the previous day, the Respondent wrote and dismissed the Grievant from employment on allegations of failing to submit PAYE. It all seemed preconceived and not in keeping with the dictates of the law. No proof of substantive or procedural fairness was displayed rendering the dismissal both unlawful and unfair. It also was unprocedural and the Grievant would therefore be entitled to one month's salary in lieu of notice, maximum compensation for 12 months for the heinous and Machiavellian manner of dismissal. The circumstances of this instant case warrants that the request for reinstatement be declined as it is clear there would be frustration of the Grievant. The Grievant is also entitled to issuance of a certificate of service in terms of Section 51 of the Employment Act and costs of the suit. Judgment is hereby entered for the Grievant as follows :-

i. one month's salary in lieu of notice – Kshs. 25,427/-.

ii. 12 months' salary being maximum compensation– Kshs. 366,144/-.

iii. certificate of service strictly in conformity with the law.

iv. costs of the suit.

v. Interest on the sums in i) and ii) above at court rates from the date of judgment till payment in full.

It is so ordered.

Dated and delivered at Nyeri this 21st day of January 2020

Nzioki wa Makau

JUDGE



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