



J.A.O. v. Homepark Caterers LTD, et al.

J.A.O v. Homepark Caterers LTD & 2 Ors., (2004) eKLR (Kenya).

Country: Kenya

Region: Africa

Year: 2004

Court: High Court at Nairobi

Health Topics: Health care and health services, Health information, HIV/AIDS, Hospitals

Human Rights: Freedom from discrimination, Right to privacy

Facts

The Plaintiff, J.A.O., was a woman living with HIV. The Defendants were her employer (Homepark Caterers), her doctor and hospital. The Plaintiff claimed the doctor and hospital subjected her to an HIV test without her consent, in violation of her constitutional right to privacy. She further claimed that the doctor disclosed her HIV status to her employer without her knowledge or consent, in violation of her constitutional right to confidentiality and the doctor's statutory duty of confidentiality. The Plaintiff also claimed that she was unlawfully terminated from her employment on the basis of her HIV status.

The Defendants asked the Court to dismiss the suit for failure to state a reasonable cause of action. The Defendant employer claimed the reason for the Plaintiff's termination was "prolonged absenteeism on medical grounds." The Defendant doctor claimed she did not disclose the Plaintiff's HIV status to the Defendant employer and that the Plaintiff was not tested for HIV without her consent.

Decision and Reasoning

The Court held that the Originating Summons established a reasonable cause of action. The cause of action was "redress and relief for the violation" of human rights. As to whether the cause of action was "reasonable," the Court stated that if the Plaintiff's dismissal from employment could be said to be the result of her HIV status, "such treatment, if proven, amounted to inhuman treatment." The Court thus held that given "the universality of the HIV/AIDS pandemic and the development of human rights jurisprudence together with the ongoing attempts at the harmonization of the relevant conventions with domestic law," the Plaintiff's cause of action possessed the "required degree of 'reasonableness'."

Subsequent to this judgment, the parties settled the suit out of court by consent agreement. The agreement stated the following:

"Without admitting or attributing liability on the part of the Defendants in the suit, the following declarations are made:

The testing of an employee or prospective employee for HIV without his/her informed consent constitutes an invasion of his/her privacy and is unlawful.

That disclosure of an employee's HIV status to the employer without the employee's consent is unlawful.

The termination of an employee on grounds only of an employee's HIV status is unlawful." The Defendants were ordered to pay the Plaintiff 2,250,000 Kenya shillings "to cover and settle damages in respect of the suit plus all the legal costs."

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Decision Excerpts

"Given the above, the nature of this case, the universality of the H.I.V./AIDS pandemic and the development of human rights jurisprudence together with the ongoing attempts at the harmonization of the relevant conventions with domestic law, I would be most hesitant to overlook the positive features of the Originating Summons which give it the required degree of "reasonableness", sufficient in my view, to give the required life support or to breath life into the action however weak the chances of a constitutional reference may prove to be if at all." Page 11-12.

