



Inzofu v Ipress Ltd (Cause 2412 of 2017) [2023] KEELRC 1863 (KLR) (28 July 2023) (Judgment)

Neutral citation: [2023] KEELRC 1863 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

CAUSE 2412 OF 2017

AN MWAURE, J

JULY 28, 2023

BETWEEN

FREDRICK OPILO INZOFU CLAIMANT

AND

IPRESS LTD RESPONDENT

JUDGMENT

1. The claimant filed a claim dated November 14, 2017 praying for a declaration that he was wrongfully and unfairly terminated from his employment.

Claimant's case

2. The claimant states that on September 1, 2016 he entered into a contractual relationship with the respondent. He was employed as a rider and his salary was kshs 17,000/- per month.
3. He says about December 17, 2016 without any colour of right the respondent terminate his employment. He was to work on a 6 months contract.
4. The claimant prays for the reliefs stipulated in his aforesaid memorandum of claim.

Respondent's case

5. The respondent filed his statement of response dated January 24, 2022. The respondent says the claimant was incompetent rude and unprofessional and his behaviour amounted to fraudulent and demeaning conduct.
6. He says they wrote to the claimant on June 22, 2016 about his conduct but he did not respond.
7. The respondent says they also gave claimant several oral warnings and by December 17, 2016 following numerous complaints of client's claimant was given 14 days warning and once again the claimant failed to respond.



8. He says that instead the claimant absconded from duty and still the respondent paid him for December 2016. So the respondent says they have paid the claimant all his dues and that instead he should pay kshs 17,000/- being one month salary in lieu of notice.
9. The respondent otherwise prays that the claimant's case be dismissed with costs to the respondent.

Claimant's evidence in court

10. The claimant gave his evidence in court on February 27, 2023 and he retaliated the evidence contained in the memorandum of claim. He says he worked for the respondent from June 25, 2016 up to December 17, 2016 and when he was terminated he was not issued a termination letter.

Respondent's evidence in court

11. The respondent's witness Mr Sajesh says he had hired the claimant for 4 months. He says the claimant was rude and impatient. He says they summoned claimant for disciplinary proceedings but he did not turn up and so he absconded from employment.
12. Respondent says they gave claimant warning letters and he was invited for disciplinary hearing verbally but he did not show up. He says he did not report the case of claimant's abscondment from work to the labour officer.

Submissions

13. The claimant's submissions dated March 1, 2023 were considered by the court and also the respondent's submissions dated March 25, 2023 were also considered by the court.

Analysis and determination

14. The main issue for determination as I see it is to determine if the claimant was unlawfully terminated from employment or whether he abscond from his employment. He claim he was unlawfully terminated but the respondent claims he imply absconded from his employment and even when he was invited for a disciplinary hearing he failed to turn up.
15. Section 44(4)(a) provide that if an employee without leave or other lawful cause absents himself from the place appointed for performance of his work that amounts to gross misconduct.
16. The law however provides that in claiming abscondment the employer must show efforts made to trace the deserting employee and further that the employee absented himself with no intention to go back to work. In one of the many cases where courts have pronounced themselves on desertion being Case no 236 of 2016 *Ronald Nyambu Daudi vs Tornado Carriers Limited* where the court held:

“desertion of duty is a grave administrative offence which if proved would render an employee liable for summary dismissal. It is however not enough for an employer to simply state that an employee has deserted duty. The law is that an employer alleging desertion against an employee must show efforts made towards reaching out to the employee and putting them on notice that termination of employment on this ground is under consideration.”
17. The same was held in the case of *Evans Ochieng Olouch vs Njimia Pharmaceutical Limited* 2016) eKLR.
18. In this case the respondent failed to prove that the claimant resigned from his employment or at the worst case scenario absconded from duty.



19. The court has well considered the pleadings herein the evidence adduced and the submissions and is well persuaded the claimant was not given a valid reason for his termination and was not put through mandatorily disciplinary proceedings as provided in sections 41(1) 43(1) and section 45(1) of the Employment Act. In view of the foregoing judgment is entered in his favour and will be awarded the following reliefs.

- i. One month salary in lieu of notice kshs 17,000/-
- ii. There is no proof of outstanding wages and claimant admitted in his evidence he was paid salary up to December 2016.
- iii. Compensation for unlawful termination considering the worked for only a few months will be awarded at kshs 34,000/- equivalent of 2 months.
- iv. Total ward is Kshs 51,000
- v. Costs are awarded to the claimant and interest at court rates from date of judgment till full payment.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 28TH DAY OF JULY, 2023.

ANNA NGIBUINI MWAURE

JUDGE

