



Mugo v Artemis Outsourcing Limited (Employment and Labour Relations Cause 692 of 2018) [2023] KEELRC 3007 (KLR) (27 November 2023) (Judgment)

Neutral citation: [2023] KEELRC 3007 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 692 OF 2018
B ONGAYA, J
NOVEMBER 27, 2023**

BETWEEN

DOMINIC NJOROGE MUGO CLAIMANT

AND

ARTEMIS OUTSOURCING LIMITED RESPONDENT

JUDGMENT

1. The claimant filed the statement of claim on 10.05.2018 through Muturi Njoroge & Co Advocates. The claimant prayed for judgment against the respondent for:
 - a. General damages for wrongful dismissal.
 - b. Costs and interest of the suit.
2. The Statement of response was filed on 10.08.2018 through Kinyanjui Kirimi & Co Advocates. The respondent prayed that the suit be dismissed with costs.
3. The claimant's case was that he was an employee of the respondent. That between the period of 25.12.2017 and 28.12.2017 he reported for duty at Tuskys Supermarket within Ananas Mall Thika Makongeni and was assigned duties as usual, to man the sales tills. He states that he worked efficiently and no complaint was raised about his work. The claimant has pleaded as follows:
 - a. The claimant was summoned on 29.12.2017 by the respondent and informed that there was a complaint that he did not surrender a customer's change on 25.12.2017.
 - b. The claimant refuted the allegations of theft and demanded to know or see the complainant. However, his request was declined and what followed was suspension from duty and ultimately dismissal from work entirely.



4. The claimant states that the dismissal from work on the grounds of stealing has caused him to suffer great loss and ridicule as he is being perceived as a thief and as a result a dangerous member of the society.
5. On the part of the respondents it is stated that the claimant was employed by the respondent company on a contract basis and was assigned to work at Tusker Mattress Limited in Thika at Ananas Mall.
6. That sometimes in December 2017 a customer upon shopping forgot to pick his balance of Kshs.200 and the same was kept under the till keyboard by the claimant to be forwarded to the manager for further action.
7. The respondent alleges the claimant was caught by the premises C.C.T.V camera pretending to pick a spoilt receipt and picked the money underneath the keyboard, which the respondent states, amounts to stealing and should have attracted summary dismissal. However, the claimant was given a chance to defend himself on 19.01.2018 but he did not give any sufficient reason for doing so.
8. Further, the claimant was initially suspended as the management conducted investigations to ascertain if other employees were part of the incident. thereafter the claimant was found guilty and dismissed.
9. The parties filed their respective submissions. The Court has considered the parties' respective cases and makes findings as follows.
10. To answer the 1st issue, the parties are in agreement that they were in a contract of service. The respondent employed the claimant as a cashier in charge of till at the supermarket. The claimant worked for the respondent from sometimes in 2014 for 4 years upon renewable term contracts. The last of such term contracts was dated 01.07.2017 running for a year.
11. To answer the 2nd issue, the claimant was suspended by the letter dated 05.01.2018 and the contract terminated by the letter of summary dismissal dated 19.01.2018. The dismissal was effective 05.01.2018. The reason for termination was that a customer's change of Kshs.200 was kept below the till key board and the claimant proceeded to pick the amount from the keyboard while pretending to be collecting the receipts. Further, the action amounted to pocketing the customer's money.
12. To answer the 3rd issue, the Court returns that the termination was not fair for want of a valid reason and due procedure. The claimant testified that the allegation was that he was summoned on 27.12.2017 or 29.07.2017 about the money alleged to have been lost on 25.12.2017. He gave his explanation that he had no variance in his till on the material date and the Chief Cashier confirmed that indeed he had no variance at all. After 29.12.2017 it appears that the claimant continued to work until he was suspended on 05.01.2018 for two weeks for further investigations. The claimant was thereafter not given a hearing but was dismissed by the letter dated 19.01.2018. The Court finds that after the alleged investigations the claimant was not given an opportunity to exculpate. The due procedure of a notice and a hearing was not followed at all. While respondent witness (RW) testified that there was a CCTV clip, the evidence of that clip was not provided to the Court. As for flow of the events, RW testified incoherently thus, "On 25.12.2017 there was alleged theft. It was brought to the Management attention on 18.12.2017. I say it was 18.12.2017. The management learned about the incident on 29.12.2017. We interrogated the issue. We shared the CCTV camera...." The Court returns that such incoherent and contradictory account by the employer cannot be trusted. In the circumstance the reason for termination cannot be said to have been shown by the respondent to have existed as per section 43 of the *Employment Act*, 2007. The procedure as well did not pass the test in sections 41 and 45 of the Act. It was unfair summary dismissal both in procedure and substance. Submissions for the claimant are upheld in that regard.



13. The 4th issue is on remedies. The Court has considered the factors in section 49 of the *Employment Act* for award of compensation. The claimant had about 7 months of unexpired service and the termination was abrupt. The claimant had a clean record of service. To balance justice for the parties he is awarded 8 months times Kshs.17,500.00 =Kshs.140,000.00. The respondent will pay costs of the suit.

In conclusion judgment is entered for the claimant against the respondent for:

- a. The respondent to pay the claimant Kshs.140,000.00 (less PAYE) by 01.02.2024 failing interest to be payable thereon at Court rates till full payment.
- b. The respondent to pay costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS MONDAY 27TH NOVEMBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

