



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 87 OF 2018

LEONARD KHALUMI YESWA.....CLAIMANT

VERSUS

CRJE (EAST AFRICA) LTD.....RESPONDENT

JUDGMENT

Introduction

1. The Claimant filed this claim on 26th April, 2018. He prays for a declaration that the Respondent wrongfully terminated his services, damages for wrongful termination and benefits due and owing to him from the Respondent.
2. The Respondent filed a statement of response to the Claimant's claim on 27th June, 2018, wherein, he admitted being the Claimant's former employer and denying the rest of the Claimant's claim.
3. Parties sought time to attempt an out of court settlement, which did not materialize. The matter proceeded for hearing on 30th September, 2021.
4. The Claimant testified in support of his case, while a Mr. Nicholas Maiyo testified on behalf of the Respondent.
5. Parties filed submissions and which were duly considered.

The Claimant's Case

6. The Claimant adopted his statement dated 30th July, 2020. The court record bear yet another of the Claimant's statement dated 12th September, 2018.
7. The Claimant's case is that he was employed by the Respondent on 4th July, 2016 as a store keeper under a renewable contract of service. The Claimant states that he worked diligently until 1st November, 2017, when he was unlawfully terminated from the service of the Respondent.
8. The Claimant avers that he received three (3) warning letters in relation to performance of his duties, but asserts that the warnings lacked basis as the items said to have been stolen from the Respondent's stores, were found in the custody of another of the Respondent's employees. He further states that although binding wires were found in one of the Respondent's car, he was not the driver of the said car and was therefore not the one who stole the wires.
9. It is the Claimant's case that he was arbitrarily terminated without being given an opportunity to be heard. He states that he was not asked to respond to the allegations levelled against him. It is his case that the Respondent has refused to pay him his dues.
10. The Claimant's claim did not indicate what his monthly salary was. A tabulation of his claim filed together with his additional bundle of documents, indicated his monthly salary to be Kshs. 15,000/=.

The Respondent's Case

11. The Respondent's case is that it employed the Claimant on 10th July, 2016 as a store man. It states that on 1st November, 2017, it

terminated his services for failing to account for missing items in the Respondent's stores where he was employed as the store keeper.

12. The Respondent states that the Claimant involved himself in theft of hoop iron from its stores where he worked.

13. It is the Respondent's case that the termination process was conducted pursuant to the provisions of the Employment Act. It is their case that the Claimant was issued with three warning letters dated 22nd May, 2017 for leaving the Respondent's stores unattended, 4th September, 2017 for failure to account for missing helmets and on 19th October, 2017 for theft of hoop iron from the Respondent's stores.

14. The Respondent avers that despite the warnings, the Claimant failed to and/or ignored the need to transform or change behaviour and continued to engaged in acts that amounted to gross misconduct, leading to his eventual termination.

15. The Respondent's prayer is for the claim be dismissed with costs.

Determination

16. The issues for determination in this matter are:

- i. Whether the Claimant was unfairly terminated
- ii. Whether the Claimant is entitled to the reliefs sought
- iii. Who bears the costs of the suit.

Whether the Claimant was unfairly terminated

17. The evidence before this court is that the Respondent issued the Claimant with warning letters for items lost in his custody.

18. The Respondent's witness admitted that the Claimant was not taken through a disciplinary hearing, instead, he was issued with warning letters which culminated in a termination of service.

19. The Respondent termination process did not meet the fairness test enshrined in Section 41 of the Employment Act.

20. The items said to have been stolen were part of the Claimant's job. The items were in the Respondent's stores and the Claimant ought to have known how they got out and under whose authorization this happened.

21. The Claimant was issued with several warning letters which pointed to his poor record of service. The warning letters are a clear indication that the Respondent had valid and fair reasons to terminate the services of Claimant.

22. The court finds and holds that the termination of the Claimant, though justified, did not meet the procedural fairness principles required under Section 41 of the Employment Act, 2007. The termination is found to be unlawful and unfair.

Whether the Claimant is entitled to the reliefs sought

23. The Claimant herein, largely contributed to his termination, he is awarded one-month salary in compensation for unfair termination.

24. The Claimant has sought an order declaring his termination wrongful, damages for wrongful termination and benefits due and owing. Other than the prayer to declare his termination wrongful, no other claim was proved before this court.

25. The Claimant did not tell the court the nature of the dues owed, the amount and evidence that he is owed the dues. He is the burden bearer and has failed to discharge this burden. The prayer for benefits fails and is dismissed.

26. In conclusion, judgment is entered against the Respondent and in favour of the Claimant as follows:

- i. A declaration that the Claimant's termination is unprocedural and unfair
- ii. One month's salary in compensation for unfair termination at Kshs. 15,000/=
- iii. Costs of the suit and interest at court's rate until payment in full.

27. Judgment accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 20TH

DAY OF JANUARY, 2022

CHRISTINE N. BAARI

JUDGE

Appearance:

N/A for the Claimant

N/A for the Respondent

Ms. Christine Omollo- C/A