



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT UASIN GISHU

COURT NAME: ELDORET LAW COURT

CASE NUMBER: ELRC.C/58/2017

CITATION: PETER MURUNGA MURUMBA VS KEN KNIT (K) LIMITED

JUDGMENT

ON 2021-10-22 BEFORE HON. JUSTICE J. N. ABUODHA

1. The claimant alleged he was employed by the respondent in May, 1997 as a machine operator and worked until 28th September, 2012 where he alleges the respondent unlawfully terminated his service and reused and or ignored to pay his terminal dues.
2. The respondent in its defence pleaded that the claimant was employed on 21st April, 2000 and his contract stated that his duties could be altered at the discretion of the management. His basic salary was Ksh.3,043/= and house allowance of Ksh.700/=.
3. According to the respondent the claimant was not performing his duties diligently which led to management to issue several warning letters with regard to irregular attendance to work and further failure to meet set target hence low productivity.
4. The claimant received several warning letters and was given ample time to improve on his attendance but failed to do so. Before termination the claimant was put on 3 month's performance management routine and was issued with a letter dated 22nd June, 2012 which he received and in the said letter the claimant was supposed to show improvement within 3 months, on productivity and attendance and he was warned that failure to make any remarkable improvement, disciplinary action would be taken against him.
5. Despite notice to improve on his attendance and productivity in the month September and October, the claimant worked for only few days which was in breach of his contractual obligation showing less seriousness to work for the respondent.
6. At the oral hearing the claimant stated among others that he was employed by the respondent as a machine operator and that he was employed in 1997. He further stated that he recorded a statement on 30th April, 2014 which he adopted as his evidence in chief. It was his evidence that his monthly salary was Ksh.10,000/= and that he had a pay slip to show for that. He further stated that he was not issued with any notice of termination and that he was never paid his terminal dues.
7. He denied absents himself from work and that he was productive and had worked for fifteen years by the time he got terminated.
8. In cross-examination he stated that he was given reason for termination but he felt it was not enough. He further admitted that he had previously seen the letter found at pages 19-20 of the respondent's bundle of documents and that one of them had been signed by him. The claimant admitted that there were times when he failed to report to work without informing the respondent.
9. He further admitted receiving the letter on improvement dated 22nd June, 2012. Upon termination he was paid Ksh. 9,049 as pay in lieu of notice of termination.
10. In re-examination he stated that he was not given sufficient reason for dismissal. He further stated that his production was not satisfactory and that he was not dismissed for failure to report to work.
11. The claimant in his memorandum of claim initially alleged that he was terminated without any good reason or justification and that the dismissal was unprocedural and contrary to law.
12. The respondent filed response to the claim in which it stated that the claimant was dismissed due to frequent absenteeism from work and poor performance.

13. The claimant though the only one who gave evidence admitted in cross-examination that he was given reason for the termination of his employment however according to him the reasons were not enough. He further admitted signing letter dated 22nd July, 2012 regarding the need for improvement on his performance.

14. The court has considered the claim in its entirety, the response by the respondent and documents filed in support of the reasons for terminating the claimants' service. The court has further considered admission by the claimant over his persistent absenteeism and failure to improve his performance despite being given a chance to do so and is persuaded that the claimant has failed to demonstrate that the respondent unfairly terminated his service.

15. The claim is therefore found without merit and is hereby dismissed with costs.

16. It is so ordered.

GIVEN UNDER MY HAND AND SEAL OF THIS COURT ON 2022-02-04 09:55:35

SIGNED BY: HON. JUSTICE J. N. ABUODHA (ADMINISTER JUSTICE)

THE JUDICIARY OF KENYA.

ELDORET ELRC

EMPLOYMENT AND LABOUR RELATIONS COURT

DATE: 2022-02-04 09:55:35