



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 378 B OF 2017

PHILIP OMONDI OKOTH.....CLAIMANT

v

PABARI ENTERPRISES LIITED.....RESPONDENT

JUDGMENT

1. Philip Omondi Okoth (the Claimant) sued Pabari Enterprises Ltd (the Respondent) on 6 September 2017, alleging unfair termination of employment and breach of contract.
2. The Respondent filed a Response on 17 October 2017, and this prompted the Claimant to file a Reply to the Response on 13 December 2017.
3. The Cause was heard on 27 January 2022. The Claimant and an Accounts Manager with the Respondent testified.
4. The Claimant filed his submissions on 15 February 2022, while the Respondent's submissions were not on record by 27 March 2022 as directed.
5. The Court has considered the pleadings, evidence, and submissions.

Unfair termination of employment

6. The Claimant asserted that he was dismissed on 24 December 2015 on the allegation that he was responsible for the loss of 15 bags of cement.
7. The Respondent's contention was that upon the report of loss of the cement, the Claimant was suspended to facilitate investigations and that upon the conclusion of the investigations, the Claimant could not be traced.
8. According to the Respondent's witness, the Respondent did not terminate the Claimant's contract and that it was the Claimant who did not report back to work.
9. Section 47(5) of the Employment Act, 2007 requires the employee to prove at the first instance that an unfair termination of employment occurred before the employer is called upon to justify the decision to terminate.
10. The Claimant did not disclose the name of the person who terminated his employment either in the filed witness statement adopted as evidence or during oral testimony. He thus failed to discharge the burden expected of him, considering the contention by the Respondent that he absconded work and never reported back to work after suspension.

Breach of contract

11. Section 28(4) of the Employment Act, 2007 circumscribes the number of leave days that can be carried forward.
12. The Claimant sought leave accrued over 14-years, and he claimed Kshs 184,400-. No foundational evidence or legal basis for this head of the claim was placed before the Court.
13. Without sufficient foundation, this head of the claim is declined.

Conclusion and Orders

14. From the foregoing, the Court finds no merit in the Cause, and it is dismissed with no order on costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED ON THIS 20TH DAY OF APRIL 2022.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Nyanga & Co. Advocates

For Respondent Owiti, Otieno & Ragot Advocates

Court Assistant Chrispo Aura