



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 1617 OF 2015

SAMSON OKULO SIGUNDA.....1ST CLAIMANT

SIMON HAJI MAKANI.....2ND CLAIMANT

VERSUS

SKYPLUS SOLUTIONS LIMITED.....RESPONDENT

JUDGMENT

1. The Claimants sued the Respondent seeking recompense for the alleged unfair, unlawful termination of employment, unpaid salary and leave allowance, and pro-rata leave allowance. They averred that they were employed on 1st October 2014 as drivers with the Respondent and that they worked with diligence and faithfully until 25th August 2015 when the 1st Claimant's services were terminated and 26th June 2015 when the 2nd Claimant's services were terminated. The Claimant's averred that their dismissal was not in writing and that no reason was given for the Respondent's action and that therefore their dismissal was unfair, illegal and contravenes Section 43, 45 and 46 of the Employment Act 2007. They averred that as at the time of termination they were earning Kshs. 19,000/- each and the 1st Claimant sought unpaid salary for June, July and August 2015 – Kshs. 57,000/-, compensation for wrongful termination of employment – Kshs. 228,000/-, 3 month salary in lieu of termination – Kshs. 57,000/-, pro-rata leave to be determined by Court. The 2nd Claimant sought unpaid salary for June 2015 – Kshs. 19,000/-, compensation for wrongful termination – Kshs. 228,000/-, 3 month's salary in lieu of termination, pro-rata leave to be determined by Court. They also sought the costs of the suit plus interest at court rates.

2. The Respondent entered appearance and filed a defence in which it averred that the Claimants were neither faithful nor diligent in their service to the Respondent leading to their dismissal. The Respondent averred that the Claimants were lawfully dismissed and that each of them was aware of the grounds of their dismissal. The Respondent averred that due process was adhered when they were summarily dismissed. The Respondent averred that the 1st Claimant disobeyed the drivers company policy on 8th June and 14th August 2015 by making unauthorised trip in violation of the policy's bullet 13. The Respondent further averred that the driver was overspending on 6th July 2015 in violation of the same bullet of the Policy. The Respondent averred that the Claimant was given written warnings on 9th August 2015, 13th July 2015 and 13th May 2015 and subsequently referred to the Respondent's disciplinary committee on 25th August 2015 which culminated in his summary dismissal having failed to justify his continuous disobedience of the Drivers Company Policy. The Respondent averred that on 19th June 2015 the 2nd Claimant violated bullet 14 of the Policy when he handed the vehicle over along the route and failed to sign the company register and that he also violated bullet 13 by going off route. The Respondent averred that he was equally arrogant when asked to explain his violation of bullet 16 of the Company Policy. The Respondent averred that the 2nd Claimant was referred to the disciplinary committee on 22nd June 2015 for his persistent failure to heed the warnings issued. The Respondent averred that the Claimants had since absconded from the Respondent and failed to clear and have never collected their dismissal letters. The Respondent denied receiving any demand and averred that the Claimants claim is unjust, unfair, malicious and a waste of the Court's precious time. The Respondent admitted the jurisdiction of the Court but denied the Claimants had any actionable claim against it and thus sought the dismissal of the suit with costs.

3. The Claimants filed a reply to the memorandum of response and denied receiving any verbal warnings as alleged and put the Respondent to absolute proof thereof. The 1st Claimant averred that he did not disobey the Drivers Company Policy as pleaded by the Respondent or at all. The 1st Claimant denied perusing and/or being served and/or furnished with the Drivers Company Policy at any time during his employment and hence he cannot be accused of a Policy he is not aware of. The 1st Claimant further denied making unauthorised trips as pleaded and/or at all. The Claimants denied overspending and they averred that at no time were they involved in handling the Respondent's finances and hence it was strange that they were now being accused of overspending. The Claimants requested further particulars of the overspending. The 1st Claimant averred that except appearing before the Operations Manager, General Manager and a Director on 25th August 2015 when he was verbally dismissed from employment, he denied appearing before any disciplinary committee. He averred that there was no notice or invitation served upon him outlining the reasons for the meeting. The 2nd Claimant averred he was not served and/or furnished with the Drivers Company Policy as alleged or at all hence the accusations levelled against him are baseless and unfounded. The 2nd Claimant denied being arrogant to any one and ever receiving verbal and/or written warning. The 2nd Claimant denied appearing before a

disciplinary committee on 2nd June 2015 as pleaded in the Respondent's response and averred that he was verbally dismissed from his employment without being asked to show cause through any invitation and that his dismissal was thus unlawful and illegal. The Claimants averred that the Respondent was on a fishing expedition by claiming lawful dismissal and at the same time accusing the Claimants of absconding. The Claimants deny their dismissal was lawful and that they absconded duty. They urged the dismissal of the Respondent's defence with costs.

4. The Respondent's counsel ceased acting for the Respondent on 15th February 2015. The matter came up for notice to show cause on 15th June 2021 whereat the Claimants' Counsel indicated the Claimants were still desirous of having their claim heard and determined by the Court. The Claimants sought the determination of the suit on the basis of the documents already filed in terms of Rule 21 of the Rules of this Court.

5. The Claimants filed submissions in which they submitted that they had shown that they were employees of the Respondent and that the termination of their employment was by the Respondent. They submitted that the claim was brought under Sections 43, 45 and 46 of the Employment Act and that there must be good reason under the law for termination and the termination must be in accordance with the procedure prescribed under the law. The Claimants submitted that one cannot just out of the blues wake up and terminate employees. The Claimants submitted that no exhibits were attached by the Respondent and that there was no company policy was shown or evidence that there was a policy that was given to the Claimants and how it was given/shared with them. The Claimants submitted that in the absence of any evidence in the form of annexures by the Respondent then the Court should hold that the Claimants had proved their claim and enter judgment as prayed.

6. The Claimants assert unlawful dismissal. They each had pleaded dismissal without cause and it was only the Respondent's defence that brought to light that there were meetings held on the dates pleaded above that led to the dismissal of the Claimants. The Claimants did not approach the Court with clean hands as they were guilty of material non-disclosure in as far as the dismissals went. They did not indicate these meetings and having failed to do so it is not clear whether they were telling the truth when they assert they were not aware of company policy.

7. As the Respondent conceded there were terminal dues available upon clearing with it, the Claimants are directed to clear with the Respondent and collect their terminal dues. The Respondent did not avail any proof of payment of the salaries for June 2015 for the 2nd Claimant and the payments for June, July and August 2015 for the 1st Claimant. The Respondent must make the payments within 7 days of clearance by the Claimants. The Claimants having been partly successful in as far as their claim for unpaid salary is concerned will receive Kshs. 30,000/- as costs. In the final analysis I enter judgment for the Claimants as follows:-

- a. 1st Claimant Kshs. 57,000/- as unpaid salary
- b. 2nd Claimant Kshs. 19,000/- as unpaid salary
- c. Kshs. 30,000/- as costs of the suit
- d. Interest on a) and b) above at court rates from date of judgment till payment in full.

It is so ordered.

Dated and delivered at Nairobi this 26th day of July 2021

Nzioki wa Makau

JUDGE