



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 274 OF 2018

MICHAEL OMIJA OHULA.....CLAIMANT

VERSUS

KIBOS SUGAR & ALLIED INDUSTRIES LTD.....RESPONDENT

JUDGMENT

1. Michael Omija Ohula (the Claimant) was offered employment as a purchasing Officer by Kibos Sugar & Allied Industries Ltd (the Respondent) on 2 June 2015.
2. On 22 November 2017, the Respondent issued a show-cause notice to the Claimant, and the allegation was:

variance in the purchase department and delays in procurement.
3. The notice requested the Claimant to respond within 48 hours.
4. The Claimant responded on 23 November 2017.
5. On 17 January 2018, the Respondent issued another show-cause notice to the Claimant, and the allegation again was:

variance in the purchase department and delays in procurement of all essential items like packaging bags, chemicals and electrical/mechanical items.
6. The Claimant was given 48 hours to respond.
7. The Claimant responded on 18 January 2018, and on 29 January 2018, he was suspended pending further investigations.
8. The suspension was extended through a letter dated 16 February 2018.
9. The extension was followed with a letter dated 21 February 2018, inviting the Claimant to a disciplinary hearing on 23 February 2018.
10. The hearing proceeded, and on 5 March 2018, the Claimant was notified of the termination of his employment.
11. On 2 August 2018, the Claimant sued, alleging unfair termination of employment and breach of contract. The Claimant prayed to be awarded a total of Kshs 1,117,637/-.
12. The Respondent filed a Response on 6 September 2018, and the Cause was heard on 21 May 2019 and 23 March 2021. The Claimant and the Respondent's Human Resources Manager testified.
13. The Claimant filed his submissions on 1 April 2021, while the Respondent filed its submissions on 4 May 2021.
14. The Court has considered the pleadings, evidence and submissions.

Unfair termination of employment

Procedural fairness

15. The Claimant was issued with a show-cause notice setting out the allegations to confront, and he responded.

16. The Respondent then invited the Claimant to attend an oral hearing, and he was informed of the right to be accompanied. The Claimant attended the hearing.

17. The Court is satisfied that the Respondent complied with the statutory procedural fairness requirements as contemplated by sections 35(1) and 41 of the Employment Act, 2007.

Substantive fairness

18. By dint of sections 43 and 45 of the Employment Act, 2007, the Respondent was expected to prove the validity and fairness of the reasons for terminating the Claimant's employment.

19. In the Respondent's witness statement, which was adopted as part of the evidence, it was stated:

On or about 17 January 2018, I know of my knowledge that the Claimant was issued with a letter to show cause as there was lots of variance in purchase department and also there had been delay in procurement of essential items which had led to less production thus lose to the company.

20. The details or particulars of the variance were not disclosed in the witness statement.

21. During oral testimony, the Respondent's witness again made a general statement that the Claimant would delay making purchases and, when confronted in cross-examination, responded that he had not carried his file to Court to provide the particulars.

22. Without particulars of the delays and variances, the Court finds that the Respondent did not discharge the burden expected of it.

23. The Court finds that the termination of the Claimant's employment was not for valid or fair reasons.

Compensation and salary in lieu of notice

24. The Claimant was offered salary in lieu of notice, and the Court declines to make an award under this head.

25. The Claimant served the Respondent for about 3 years, and considering the length of service, the Court is of the view that the equivalent of 2-months' salary as compensation would be fair (monthly salary was Kshs 39,000/-).

Breach of contract

Overtime

26. The Claimant did not lay an evidential foundation to this head of the claim in the witness statement or during oral testimony, and relief is declined.

House allowance

27. Copies of payslips produced by the Claimant indicated that he was earning a house allowance. Relief is declined.

Leave allowance

28. The Claimant sought Kshs 117,000/- on account of leave allowance.

29. However, the Claimant did not demonstrate whether his contract provided for payment of leave allowance.

30. If there was a legal requirement to pay a leave allowance, the Claimant did not bring to the attention of the Court such a legal provision.

Unlawfully deducted salaries

31. The Claimant did not disclose when he was unlawfully deducted salary in the form of lost hours, and relief is declined.

Service pay

32. The Claimant's payslips show that he was contributing to the National Social Security Fund, and therefore he is not eligible for *service pay* in terms of section 35(5) & (6) of the Employment Act, 2007.

Conclusion and Orders

33. The Court finds and declares that the termination of the Claimant's employment was unfair and awards him:

(i) Compensation **Kshs 78,000/-**

34. Claimant to have costs.

Delivered through Microsoft teams, dated and signed in Kisumu on this 6th day of October 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Mauwa & Co. Advocates

For Respondent Onsongo & Co. Advocates

Court Assistant Chrispo Aura