



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO.630 OF 2016

ERICK MUTEMBEI MBAYA CLAIMANT

VERSUS

MEDIVET PRODUCTS LIMITED RESPONDENT

JUDGEMENT

On 1st January, 2000 the respondent employed the claimant as a casual labourer in the stores.

On 14th January, 2000 the claimant was issued with a written contract of employment on a wage of Ksh.38, 300 per month. The wages due were not paid forcing the claimant to make an enquiry.

On 3rd and 4th June, 2015 while the claimant was heading to work he found fellow employees outside the work premises in a go-slow on the grounds that their wage arrears had not been paid. Several employees including the claimant were suspended and later an agreement reached not to be victimised and all recalled back to work.

Despite the agreement, the claimant together with 4 others were dismissed from their employment without any good cause and as victimisation following the go-slow.

On 29th July, 2015 the claimant was served with a notice to show cause after which a disciplinary committee was constituted and hearing conducted save it was in disregard of the human resource policy in place and contrary to the law and after which he was issued with letter dated 29th July, 2015 terminating his employment.

The claimant is seeking payment of his dues as follows;

- a) Unpaid wages Ksh.516,162;
- b) 4 months salary unpaid during suspension Ksh.153,200;
- c) General damages;
- d) Interests on the awards; and
- e) Costs.

The claimant testified in support of his claims that following a go-slow by employees of the respondent on 3rd and 4th June, 2015 the claimant was accused of engaging in an unlawful strike and suspended without pay. He was later issued with notice to

show cause and a hearing conducted without regard to due process and then issued with notice terminating employment dated 29th July, 2015.

The claimant testified that since joining employment of the respondent he was placed in two departments in stores and the in-charge of stores but was only paid as the assistant which the union tried to address without success. For the second role he is claiming unpaid wages of Ksh.516, 162 in accordance with the CBA.

The claimant was suspended following the go-slow and for 4 months he was not paid his wages which led to wrongful termination of employment.

In response, the respondents defence comprise mere denials and that the claimant was paid all his dues which he acknowledged and absolved the respondent from any liability in writing.

No evidence was called as the respondent remained absent at the hearing. Determination

By letter dated 29th July, 2015 the respondent terminated the claimant's employment on the grounds that he had participated in an illegal strike on 3rd and 4th June, 2015.

The claimant confirmed in his evidence that on 3rd and 4th June, 2015 all employees of the respondent were engaged in a go-slow outside the workplace and hence he was part of it. on 8th June, 2015 he was sent on leave and then was issued with a notice to show cause to which he replied and was invited to a hearing where his response was found unsatisfactory.

The claimant has filed letter dated 5th June, 2015 by the union acknowledging that on 3rd June, 2015 the employees had participated in a strike and a return to work agreement was reached and clause (3) is that *the employer shall take disciplinary action against any employee who will refuse to obey this return to work formula.*

In the agreement, the union and the respondent agreed that *employees' arrears arising from the negotiated CBA be paid in the months of July and September, 2015.*

The claimant has not attached the specific CBA between the union and the respondent conferring the benefit of wage arrears. I take it such agreement was to be enforced between the union and the respondent pursuant to section 59(5) of the Labour Relations Act, 2007.

It is trite that an employee who engages in an unprotected strike or industrial action is in breach of his employment contract and subject to summary dismissal. An industrial action must therefore be protected pursuant to section 79 of the Labour Relations Act, 2007 for the employee to claim wages due over such period.

Section 79(6) of the Labour Relations Act, 2007 directs the employer thus;

(6) An employer is not obliged to remunerate an employee for services that the employee does not render during a protected strike or lock-out.

These provisions must be read together with section 17 and 19 of the Employment Act, 2007.

The claimant having been taken through the due process envisaged under section 35 and 41 of the Employment Act, 2007 and given the reasons leading to termination of employment; he cannot claim damages for alleged wrongful termination of his employment.

Notice pay is equally not due.

On the claim for wage arrears for holding two positions, the claimant has only attached a single letter of appointment. There is no other matter conferring him double employment to justify a claim for two wages.

It is however noted that by letter executed by the parties on 1st February, 2016 the claimant was to be paid Ksh.444, 609 in terminal dues. Save for the letter of discharge, there is no evidence that such amounts were remitted to him.

For the period the claimant was on suspension and until his employment was terminated, as the respondent has not shown any good cause why such period should not be paid for, the amount claimed of Ksh.153, 200 is due.

Accordingly, judgement is hereby entered for the claimant against the respondent and the claimant shall be paid Ksh.153,200 being unpaid wages; the respondent shall confirm payment of ksh.444,609 agreed upon within 30 days; and the claimant is awarded 50% of his costs.

Delivered in court at Nairobi this 9th day of December, 2021.

M. MBARU

JUDGE

In the presence of:

Court Assistant: Okodoi

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