



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 53 OF 2015

(Formerly ELRC No.573 A of 2014 at Nakuru)

KENYA PLANTATION & AGRICULTURAL WORKERS UNION.....CLAIMANT

-VERSUS-

PENTA TANCOM LTD T/A PENTA FLOWERS.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 6th March, 2020)

JUDGMENT

The claimant filed the memorandum of claim on 19.11.2014. The claimant alleged the unlawful, unfair and illegal termination of employment of its member Phillip Njandi Mwangi (the grievant). The claimant's case is that at all material time there are binding recognition and collective agreement between the parties. The grievant was employed by the respondent on 01.07.1998 as a greenhouse worker at Kshs.3, 700.00 per month and he successfully served the 3 months' probation term. It is the claimant's case that on 23.10.2011 the respondent's manager confronted the grievant for alleged mishandling of the flowers. The grievant alleges that the manager used fowl, scolding, improper and demeaning language against the grievant. The claimant alleges that in the process the manager insulted the grievant and told him that he would ensure that the grievant lost his employment. The claimant alleges that the manager told the grievant to leave but the grievant demanded a gate pass because the working hours had not lapsed and the manager summoned security guards who ejected the grievant. The claimant alleges that on 24.10.2011 the grievant reported to work but was summoned in a meeting with management and forced to sign a witness statement that had been already authored. The exhibited statement is an account of the eye witnesses of the events of 23.10.2011 between the grievant and the manager at the greenhouse. The claimant pleads that the grievant was then asked to leave the respondent's premises and never to come back again. The claimant states on 27.10.2011 the grievant informed the shop floor union officials and who wrote for information from the management. On 09.11.2011 the union branch secretary wrote to the management about the case. The respondent replied to the claimant by the letter dated 14.11.2014 and enclosing the letter dated 25.10.2011 addressed to the grievant and confirming that the grievant's employment had been terminated following gross misconduct on 23.10.2011. Conciliation process failed to yield amicable resolution of the dispute.

The claimant prays for judgment against the respondent for:

- a) Unconditional reinstatement of the grievant.
- b) Payment for entire period after dismissal.
- c) Pay all due leave as at time of reinstatement.
- d) To pay leave travel allowance.

In alternative the claimant prays for:

- a) Payment of gratuity for years served per CBA.
- b) Payment of house allowance from the date of dismissal to the date of judgment.
- c) 12 months' pay.
- d) Pay in lieu of leave from the date of dismissal.
- e) Leave traveling allowance for the period of dismissal.

- f) Pay in lieu of termination notice.
- g) Damages for unfair and illegal termination.
- h) Costs of the suit.
- i) Interest.
- j) Any other relief the Honourable Court deems fit to grant.

The memorandum of response was filed on 09.03.2015 through Walker Kontos Advocates. The respondent's case is that on 23.10.2011 the Farm Manager one Joseph Karanja cautioned the grievant after he mishandled cut flowers in the manager's presence. Further the grievant reacted by threatening the manager to a fight, physically pushed the manager and threatened to stab the manager with the scissors he was holding. Further the grievant warned the manager that he should not walk around without protection. All that happened in presence of the other workers and after the scuffle the manager asked the grievant to obtain a gate pass to leave the premises but he refused to comply and the security guards were summoned to escort the grievant from the premises. On 24.10.2011 the grievant was summoned to appear before a disciplinary panel which was attended by the management and the shop stewards. The respondent's case is that the grievant admitted that he threatened to beat the farm manager and when he was informed that the conduct warranted summary dismissal, he walked away from the proceedings. In the process the grievant called out one of the supervisor one Eunice Aoko and threatened her with physical harm and which was reported at Juja Police Station under OB 30/24/10/2011. The grievant was summarily dismissed on 25.10.2011 when the grievant was called by phone to collect the termination letter and final dues but he declined to do so. The respondent's case is that the grievant's employment was terminated per section 44(3) and (4) of the Employment Act, 2007 and a certificate of service was issued. The respondent prayed that the grievant's suit be dismissed with costs.

The grievant testified to support his case and the respondent called two witnesses. The Court has considered the pleadings, the evidence and the submissions on record. The Court makes findings as follows.

- 1) There is no dispute that the respondent employed the grievant to work at the greenhouse in the respondent's flower farm and for the period as pleaded for the claimant.
- 2) There is no dispute that the grievant was summarily dismissed from employment following the events of 23.10.2011. The dismissal was on 25.10.2011.
- 3) He grievant's case is that he was not given due notice and the reasons for termination were not valid. The grievant confirmed that his wife worked at the same farm and she called him and conveyed that the Human Resource Manager (HRM) wanted to see him. The grievant testified that one Joseph Mulefu attended the meeting (and who by evidence on record was a shop steward). The grievant's evidence was that he was not heard in his defence and nothing happened at the meeting. The respondent's witness No.1 was Bryan Gatungu (RW1) the administration officer. His evidence was that the grievant assaulted the Farm Manager (Joseph Karanja) on 23.10.2011. A disciplinary hearing took place on 24.10.2011 in presence of the grievant, the shop stewards, witnesses and the management. It was decided that the grievant be summarily dismissed. The respondent's witness No. 2 (RW2) was one Joseph Karanja, the farm manager. He narrated the events of 23.10.2011. The Court finds that there is no reason to doubt the respondent's account of the circumstances surrounding the events of 23.10.2011 and leading to the grievant's termination. The claimant's own exhibit 3 shows the statements by the eye witnesses. They show the grievant turned away from the manager when the manager addressed him on the material day and both parties were brandishing scissors. They further show that in the process the grievant threatened to stab the manager and further the grievant told the manager that he will need protection to walk around. The Court finds that the respondent has established that there were valid reasons for the summary dismissal as per section 43 and 45 of the Employment Act, 2007. The Court further finds that the respondent accorded the claimant due procedure as per sections 41 as read with sections 44 and 45 of the Act. The Court considers that the grievant knew the case that confronted him, he was given a hearing in presence of the union shop floor representatives and he was found culpable. In the circumstances the Court finds that the dismissal was not unfair or unlawful.
- 4) The Court finds that as the dismissal was not unfair or unlawful, the claimant's suit will collapse. The remedies as prayed for will fail as not established and as unjustified in the findings by the Court.

In conclusion, judgment is hereby entered for the respondent against the claimant for dismissal of the suit with costs.

Signed, dated and delivered in court at **Nairobi** this **Friday, 6th March, 2020.**

BYRAM ONGAYA

JUDGE