



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 279 OF 2015

PETER ONYANGO OOKO.....CLAIMANT

VERSUS

S.S. MEHTA AND SONS LIMITED.....RESPONDENT

JUDGMENT

1. The suit was filed on 3rd March 2015 by the claimant praying for damages for wrongful termination and payment of terminal benefits including three months salary in lieu of notice; service gratuity for three years worked and responsibility allowance for the years of service. The claimant further sought interest on the award and costs of the suit.
2. The claimant (CW1) testified that he was employed by the respondent as a lorry driver in November 2010 at a monthly salary of Kshs. 50,000. That he worked diligently and continuously until 13th March 2014 when his employment was terminated without any valid reason. CW1 testified that the lorry he drove had a faulty speedometer. That he reported the matter to the employer but the vehicle was not repaired. The supervisor alleged that the claimant had tampered with the speedometer without any evidence to that effect. That he had a clean record and had no warnings or faced any previous disciplinary action. That the claimant was issued no notice to show cause nor was he given notice of termination. The claimant was also not subjected to any disciplinary action. The claimant was simply summoned back to office whilst driving his lorry and was given letter of termination. The claimant testified that he was not paid in lieu of notice but was given letter of termination and paid one month salary for days worked.
3. The claimant testified that he was registered with NSSF and NHIF and dues were paid by the employer.
4. Under cross examination, the claimant stated that he was assigned different Lorries to drive but KBN 560M had faulty speedometer and it did not record correct mileage.
5. The claimant insisted that he had never interfered with the speedometer and he had reported the defect severally but it was not repaired. The claimant stated that he stopped working on 8th April 2014 but the letter of termination was dated 14th March 2014.
6. RW1 Geoffrey Kanado testified that he was the Deputy Human Resource Manager of the Respondent and had served the respondent for ten (10) years. That the claimant was a truck driver of the respondent and drove a truck registration number KBN 560M. RW1 testified that the respondent thought the truck would take time to repair and therefore terminated the employment of the claimant on grounds of redundancy. That there was no motor vehicle for the claimant to drive. That the claimant received a letter dated 14th March 2014. That the respondent was in the process of preparing final dues for the claimant when the company realized that the claimant had tampered with the lorry speedometer. The claimant was then summarily dismissed on 14th April 2014. RW1 stated that he was not aware if the claimant was given opportunity to explain his case. RW1 insisted that respondent was justified to summarily dismiss the claimant. That the claimant was issued with a certificate of service.
7. RW1 testified that he was not involved in this case at all. RW1 stated that he did not inspect the said lorry. RW1 admitted that the letter dated 14th March 2014 did not give any reason for the termination of the employment of the claimant. RW1 stated that the claimant was summarily dismissed later on 14th April 2014. That the suit be dismissed with costs.

Determination

8. The issues for determination are:

- a. Whether the respondent had a valid reason to dismiss the claimant from employment and if the respondent followed a fair

procedure.

b. Whether the claimant is entitled to the reliefs sought?

9. In answer to both questions above, the court has carefully analyzed the testimony of CW1 *vis a vis* that of RW1 and is satisfied that the claimant's employment was terminated by a letter dated 14th March 2014. The said letter did not provide any reason for the termination of the claimant's employment. The claimant had not been served with any notice to show cause prior to the termination of his employment. The termination was without notice. The claimant was also not subjected to any disciplinary hearing. The respondent stated in the letter of termination that it would compute terminal dues of the claimant and contact him to collect the same. This did not happen. The claimant was only paid salary for days worked.

10. The respondent purported to write the claimant a letter of summary dismissal dated 4th April 2014 on allegations that on 8th April 2014, the claimant's supervisor had discovered that the claimant had tampered with the speedometer of the vehicle. RW1 testified that the respondent decided not to pay the promised terminal benefits therefore.

11. The totality of the evidence before court is that the claimant's employment was terminated by a letter dated 14th March 2014 for no reason assigned and without any preceding disciplinary process. The termination violated *sections 36, 40, 41, 43 and 45 of the Employment Act, 2007*. The second letter purporting to summarily dismiss the claimant dated 14th April 2014 was of no consequence because the claimant had already unlawfully and unfairly ceased to be an employee of the respondent. The second letter was a mere excuse for the respondent to avoid its legal obligations to pay terminal benefits to the claimant which it has not paid to date.

12. The claimant has proved his case on a balance of probabilities and is entitled to compensation in terms of *Section 49(1) (c) and (4) of the Employment Act*, for the unlawful and unfair termination of employment. In this regard, the claimant had served the respondent for a period of 3 years with a clean record. The claimant did not contribute to the unlawful termination of employment. The claimant was not compensated for the sudden job loss and was not paid any terminal benefits. The claimant suffered loss and damage and is entitled to the equivalent of three (3) months salary in compensation for the wrongful termination in the sum of Kshs. 150,000.

13. In addition the claimant is entitled to one (1) month salary in lieu of notice and not the three months claimed in the sum of Kshs. 50,000.

14. The claimant was registered with NSSF and the statutory dues were paid in respect thereof. However, RW1 testified that the claimant was declared redundant and his employment terminated by the letter dated 14th March 2014. Accordingly, the claimant is entitled to payment of severance pay calculated at 15 days salary for each completed year of service in the sum of Kshs. 71,000.

15. The claimant is also entitled to interest on the award and costs of the suit.

16. Judgment is therefore entered in favour of the claimant as against the respondent as follows:

- a. Kshs. 150,000 being the equivalent of three months salary in compensation.
- b. Kshs. 50,000 in lieu of one month notice.
- c. Kshs. 75,000 being severance pay arising from redundancy.

Total award Kshs. 275,000

d. Interest at court rates from date of filing suit in respect of (b) and (c) above and from date of judgment in respect of (a) above till payment in full.

e. Costs of the suit.

Dated, Signed and delivered in Nairobi this 16th day of April, 2020

Mathews N. Nduma

Judge

ORDER

In view of the declaration of measures restricting court of operations due the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this judgment has been delivered to the parties online with their consent. They have waived compliance with *Order 21 rule 1 of the Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by *Article 159(2)(d)* of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under *Article 48* of the Constitution and the provisions of *Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)* which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

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Judge

Appearances

Mr. Obuoga ONyang for claimant.

Mr. Menezes for the Respondent.

Mamo – Court clerk.