

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1141 OF 2015

ANDREW ISSAC KARANI.....CLAIMANT

-VERSUS-

SPINNERS & SPINNERS LTD.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 29th May, 2020)

JUDGMENT

The claimant filed the memorandum of claim on 02.07.2015 through Namada & Company Advocates. There is no dispute that the respondent employed the claimant effective 21.08.2005 as a machine attendant in the Blanket Weaving Department. The claimant's last monthly salary was Kshs.11, 159.00. The claimant worked on annual contracts that were renewable. He signed his last contract on 22.02.2013 and running effective from 21.11.2012. The claimant alleges that on 05.01.2015 he reported on duty and while on duty the respondent's manager known as Barasa summoned him and told him to leave the respondent's premises because his services were no longer needed. It is his case that no reasons were given and it amounted to unfair summary dismissal contrary to the Employment Act, 2007; the Constitution; and the rules of natural justice. The claimant claims and prays for:

- a) The declaration the respondent's aforesaid actions amounted to summary dismissal from employment which was unlawful and unfair.
- b) Payment of terminal dues and compensatory damages of Kshs. 156, 226.00 (being Kshs. 11, 159.00 salary for December 2014; Kshs.11, 159.00 one-month notice pay; and 12 months' salaries compensation for unfair termination Kshs.133, 908.00)
- c) Interest on (b) at Court rates.
- d) Costs of the suit plus interest thereon.

The respondent filed the reply to the memorandum of claim on 21.06.2015 through J.A. Guserwa & Company Advocates. The respondent admitted that it employed the claimant and the claimant worked as a machine attendant from 21.08.2005 to 15.01.2015. The respondent's further case was that from 21.12.2014 to 15.01.2015 the claimant absconded duty and there was no unlawful or unfair termination because he terminated his own employment by absconding from duty. The respondent denied that the claimant was entitled to the claims and prayers made in the memorandum of claim. The respondent prayed that the suit be dismissed with costs.

The claimant testified to support his case and the respondent's witness (RW) was Vitalis Owangwali Barasa, the Assistant Manager in the Blanket Department.

The Court has considered the pleadings, evidence and submissions filed for the parties. The Court makes findings as follows:

- a) The claimant testified that he was on leave from 21.12.2014 to 15.01.2015 and again testified that he was to resume duty on 05.01.2015. The Court finds that the claimant was contradictory on the leave period or dates and the date of resumption of duty and his evidence cannot be believed in that respect. It cannot be that he was to be on leave from 21.12.2014 to 15.01.2015 and be expected to resume duty on 05.01.2015. He also testified that the record on leave application was with the respondent but no effort had been made on his behalf to obtain and exhibit that record. The claimant admitted that he received the warning letter dated 03.11.2014 that he was absent from duty on 23.10.2014 to 27.10.2014 and he signed acknowledging receipt. The Court finds that in absence of any other material on record, the warning was issued upon valid grounds. As testified by RW, the claimant had alleged that he had been unwell for the period of absence but he had provided no medical evidence. There is no reason to doubt the account by RW that on 01.12.2014 to 05.01.2015 the claimant had not been on leave because he had not signed the relevant leave forms. RW also testified that he had no power to hire or fire the claimant and after he absconded he was seeing him in court for the first time. Further the Court finds that there is no reason to doubt the respondent's evidence that the claimant never worked in December 2014 and further that he is not therefore entitled to the pay as claimed for.
- b) The Court finds that as per the respondent's evidence the claimant absconded duty voluntarily and did not work in December 2014. The Court further returns that the claims for unfair or unlawful termination were unfounded. The Court further finds that the prayers and claims made for the claimant will fail.
- c) The Court has considered the respondent's failure to initiate disciplinary proceedings on account of claimant's absconding of duty as envisaged in section 41 of the Employment Act, 2007 and returns that each party shall bear own costs of the suit.

In conclusion the claimant's memorandum of claim is hereby dismissed with orders each party to bear own costs of the suit.

Signed, dated and delivered in court at Nairobi this Friday, 29th May, 2020.

BYRAM ONGAYA

JUDGE