



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO 1178 OF 2014**

**GILBERT AMANYA KALIBO .....CLAIMANT**

**VERSUS**

**EUROCRAFT AGENCIES LTD.....RESPONDENT**

**JUDGEMENT**

1. The claimant alleged that he was employed on permanent and pensionable terms by the respondent as cabin supervisor on 1<sup>st</sup> January, 2002. He worked until 23<sup>rd</sup> January, 2014.
2. At the onset, he was not issued with a letter of appointment until 26<sup>th</sup> November 2006 when he was issued with a promotion letter to the position of cabin supervisor. According to the claimant he worked well and earned appraisals which led to promotions and pay rise.
3. On 22<sup>nd</sup> January, 2014 the claimant worked the whole day up to 4.00 pm when the respondent took away his KAA Entry Pass thus denying the claimant access to the airport. The claimant reported the termination to the Ministry of Labour on 13<sup>th</sup> March, 2014 who is turn informed the respondent about the termination on 20<sup>th</sup> March, 2014 the claimant was served with a copy of the respondent's letter dated 17<sup>th</sup> March, 2014 requiring him to collect his termination letter from the respondent.
4. According to the claimant he was not given any lawful reason for termination and further at no time was he officially reprimanded or placed on any disciplinary program. The respondent further did not pay him his terminal dues upon termination.
5. The respondent admitted employing the claimant as alleged but averred that prior to his dismissal the claimant had become extremely gullible, irrational and superstitious and had embarked on falsely inciting other employees to strongly believe that the company's management was a cursed lot and needed the intervention of a witchdoctor to unravel why two directors had been admitted in hospital in the same year.
6. On 23<sup>rd</sup> January, 2014 at a hearing session convened by the respondent, the claimant in the company of a shop steward rudely refused to proffer any explanation on the allegations leveled against him, the claimant instead showed no remorse at all and instead retorted that the hearing session was a waste of time and further promoted the management team to take whatever decision it deemed fit forcing the management to withdraw his entry pass.
7. The respondent further stated that the claimant having incited other workers and showing no remorse at the hearing session the respondent was left with no other choice but to terminate his service.
8. Upon termination, the claimant was paid Kshs 187,283.47 from which amount the respondent deducted the sum of Kshs 92,309/= being money owed by the claimant to the respondent as a result of a loss occasioned at Aircraft 5942KQ. The respondent further contended that the claimant was a contribution to NSSF hence was not entitled to claim service pay. Further despite notifying the claimant that his terminal benefits were ready the claimant refused to collect the same.
9. At the hearing the claimant adopted his statement dated 13<sup>th</sup> December, 2018 as his evidence in the case. In cross-examination he stated that his pass was taken on 23.1.2014 and that the GM called him to his office and he found him with Human Resource and Finance manager and one of the Directors sons. He was told that before he could be told why he was called, he should surrender his pass. He denied inciting any workers and never spoke about witchcraft.
10. The claimant denied receiving any termination letter and further that he refused to collect his terminal dues. Further that he never received any letter over incitement and was never called for any disciplinary hearing. It was the claimant's evidence that he was a supervisor and that he did not have to be physically present when cleaning of aircraft was done. According to him, he received reports from team leaders. He admitted there was a loss which occurred when the employees were cleaning an aircraft.

11. The respondent's witness Mr Jeff Gatobu informed the court that he was the respondent's Human Resource Officer and was aware of the claimant's case. According to him, the claimant was terminated in February, 2014. The termination was on grounds of misconduct. The claimant was called to answer to cases of incitement but he could not listen. He became unruly and walked out on the management telling them they could do what they wanted. It was further his evidence that the claimant was issued with a warning letter. He further stated that the respondent lost money as a result of the claimant's negligence.

12. In cross-examination he stated that the claimant was called to collect his termination letter but never came for it. He further stated that the claimant worked for about twelve years and further that he was never given advance notice of the charges he was to face. The warning letter dated 9<sup>th</sup> January, 2013 was the first warning. According to Mr Gatobu, the claimant was telling the rest of the staff that the GM was using witchcraft. He further stated that no other staff was called as a witness against the claimant. Regarding loss to Aircraft 5942KQ he stated that the claimant was the supervisor and directly in charge hence the loss was attributable to him.

13. Employment contract is terminable by parties for good reason and in accordance with the contract document or the Employment Act. On the part of the employer the burden is usually cast upon such employer to prove and or justify the reason for which an employment contract has been terminated and further that the termination has occurred in accordance with a fair procedure.

14. The claimant disputed the validity of the reasons for the termination. He denied inciting workers and further that he was never given any advance notice of the allegations against him by the respondent. This fact was conceded by the respondent's witness Mr Jeff Gatobu.

15. The termination letter which was rather lengthy gave reasons for the termination as among others that the claimant was alleging that the falling sick of the two respondent's directors was as a result of witchcraft by management hence the claimant needed support to help him approaching a witchdoctor to help unravel the management input in causing the sickness. According to the letter, the management felt his behavior showed a very low opinion of the management team hence was insubordination and punishable by summary dismissal.

16. Outlandish as the allegations may seem to be, it was necessary to issue the claimant with a letter to showcause why disciplinary action including termination should not be taken against him. The allegation against the claimant was that he incited the workers in order to get support to bring in a witchdoctor to establish the role of the management in the illness of the two directors.

17. It was therefore necessary to furnish the claimant with a prior notice of the charges and call upon him to show cause and further invite him to a disciplinary hearing where he would be heard and given a chance to call evidence. Further since the allegation against the claimant was over incitement, it was useful to conduct a hearing where evidence of some of those allegedly incited would be received.

18. From the above, the court is persuaded that the respondent failed to prove or justify the reasons for the termination of the claimant's service and further that the termination was carried out through an unfair procedure. The court will therefore in addition to the claimant's terminal benefits already calculated but not collected by the claimant award him eight months' salary being Kshs 164,392 together with costs of the suit. This award shall be subject to taxes and statutory deductions. The claimant having acknowledged the loss of Kshs 92,309/= and agreed to the deduction from his salary the same will stand so deducted from his terminal dues.

19. It is so ordered.

**Dated at Nairobi this 14<sup>th</sup> day of May, 2020**

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 14<sup>th</sup> day of May, 2020**

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....**for the Claimant and**

.....**for the Respondent.**

**Abuodha J. N.**

**Judge**