



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU

CAUSE NO.500 OF 2017

JOSEPHINE KWAMBOKA MAYAKACLAIMANT

VERSUS

VEGPRO (K) LIMITED.....RESPONDENT

JUDGEMENT

The claim is that the claimant was employed by the respondent as a general worker at a wage of Ksh.6,073 per month and worked until 17th November, 2016 when employment terminated without notice, being given any reasons of payment of terminal dues. the claimant is hence seeking the payment of the following dues;

- a) Notice pay ksh.6,073;
- b) Salary for days worked in November, 2016 Ksh.2,500;
- c) Allowance ksh.60,000;
- d) Severance pay ksh.364,440;
- e) Compensation; and
- f) Costs.

The claimant testified that she was employed by the respondent as a general worker from the year 2006 to 17th November, 2016 when she was dismissed without being given any reasons. She had duties to clean the respondent's compound and was then re-assigned to the farm manager's residence, she complained due to allocation of so much work and extra duties and ore hours and applied to be returned to the farm duties but instead she was issued with a notice to show cause why her employment should not be terminated on 12th November, 2016. There was also a warning with regard to her complaints but she refused to sign because she did not know what the warning meant. A witness was called and she signed and another notice to show cause was issued and she refused to sign.

On 17th November, 2016 the claimant was issued with a letter of summary dismissal. Nothing was paid. On 16th November, 2016 she had been issued with a warning letter.

The defence is that on 10th November, 2016 the claimant was dismissed from her employment on the grounds of gross misconduct by wilfully refusing and or neglecting and failing to perform a duty assigned to her by the respondent's farm manager and for behaving in an insulting manner towards the respondent. she was issued with a notice to show cause why her employment should not be terminated but reused to explain why she refused to perform assigned duties and which resulted into issuance of another notice to show cause being issued and where the claimant adamantly refused to explain her conduct. These events were witnessed by the human resource officer and administration manager.

The defence is also that the claimant in reply to notice to show cause dated 12th November, 2016 she explained that the allocated duties were too much for her. she was invited to a disciplinary hearing where it was apparent that the claimant did not wish to work at the assigned location. A warning was issued on 16th November, 2016 but the claimant effused to accept it and this resulted in summary dismissal pursuant to section 44 of the Employment Act.

The claims made are without foundation and should be dismissed with costs.

No witness was called.

At the close of the hearing both parties filed written submissions.

The court has taken into account the pleadings, the evidence and the written submissions and the issues which emerge for determination are whether there was unfair termination of employment and whether the remedies sought are due.

By letter dated 17th November, 2016 the claimant was summarily dismissed from her employment with the respondent and there is a chronology of events leading to such decision.

In the letter, the respondent notes that on 16th November, 2016 the human resource officer caused for a hearing of the claimant following her refusal to undertake allocated duties at the residence of the farm manager without giving any good reasons. She had been issued with a show cause notice to explain her conduct on two occasions on 12th November, 2016 and had failed to give a good explanation as to her conduct save to insist that he wanted to be returned to the farm and when issued with letter of warning she refused to accept it.

In her evidence the claimant testified to similar facts as set out in the letter of summary dismissal that upon being assigned duties in the farm manager's residence she was getting too tired and wanted to be returned to the farm and when a warning was issued, she refused to sign since she did not understand the contents which were in English.

The court had the chance to hear the parties in evidence. the claimant assertion that she refused to sign the warning letter because it was done in English is not plausible. All other notices issued to her and including the letter of summary dismissal are in English, she understood it, she was issued with several show cause notices and she attended and even made a reply thereto vide her response dated 12th November, 2016 done in English.

To thus fail to accept a notice and warning issued to her by the employer on the grounds that it was done in English, to fail to attend allocated duties as a general worker and seek to work at her place of choice in essence led to frustration of own employment.

Also, under the provisions of section 44(3) and (4) (e) of the Employment Act, 2007 an employee who fails to abide the lawful instructions of an employer commits gross misconduct and such conduct attract the sanction of summary dismissal;

(e) an employee knowingly fails, or refuses, to obey a lawful and proper command which it was within the scope of his duty to obey, issued by his employer or a person placed in authority over him by his employer;

where the claimant was issued with warning following her conduct and she wanted to contest such warning, reason demanded that such be addressed procedurally as failure to accept, failure to obey lawful directions by the employer attracts a serious sanction of summary dismissal from employment. The claimant was invited to a hearing as required by the law under section 41(2) of the Employment Act, 2007 and despite her conduct being the subject of such disciplinary hearing, she remained adamant that she be allocated work at her place of choice.

As a general worker, without any skills or training, work allocation being the prerogative of the employer, the refusal and failure by the claimant to take direction with regard to her work performance was in gross misconduct. the resulting summary dismissal from employment is hereby found justified and due process was applied.

Notice pay and compensation are claims not available in a case where summary dismissal is found justified.

The claimant is claiming allowances which were not outlined in the Memorandum of Claim. These are equally not addressed in the written submissions. These claims are left without any lawful basis or policy foundation and hence declined.

On the claim for severance pay, this claim did not stand out as one covered under the provisions of section 40 of the Employment Act, 2007 to justify the claim for severance pay. Such is declined.

Accordingly, the claims made are found without foundation and are hereby dismissed. Each party shall bear own costs.

Dated and delivered electronically this 7th May, 2020 at 0900 hours

M. MBARU

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-

19 pandemic and in light of the directions issued by his Lordship the Chief Justice on

15th March, 2020 the Order herein shall be delivered to the parties via emails.

this 7th May, 2020 at 0900 hours

M. MBARU

JUDGE