



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT ELDORET**

**CAUSE NO. 261 OF 2017**

**HENRY CHERUIYOT KOSGEY.....CLAIMANT**

**AND**

**FARMERS CHOICE LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The claimant pleaded that he was employed by the respondent as a labourer in October, 1992 and later on became a foreman, weaners section at the time of dismissal.
2. On 26<sup>th</sup> June, 2012 the claimant alleged he was unfairly dismissed on allegations that he had stolen 50 kilograms of pig feed from the unit weaner house number 9. According to the claimant the dismissal was malicious as no show cause letter was given, no investigation of the alleged theft was done and he was never invited for any discipline hearing.
3. The respondent on its part pleaded that the claimant was not employed as a foreman but as a general worker. The respondent further averred that the claimant was lawfully dismissed for gross misconduct as the case was involving theft of pig feeds. According to the respondent the dismissal was procedural and in accordance with the respondent's code of conduct and provisions of the law.
4. The respondent averred that the claimant conceded the stolen pig feed was found in a manure sack with intention of stealing the same. The claimant was consequently charged in a court of law at Eldoret on Criminal case No. 2756 of 2012. The respondent further averred that upon termination, the claimant was paid his final dues and issued with certificate of service.
5. At the oral hearing the claimant stated that he was employed as a general worker. At the time of termination his monthly salary was Kshs 9,200/=. It was his evidence that he was accused of stealing but denied he ever stole. He was not issued with any show cause letter and no investigations were done. No disciplinary hearing was conducted. He further stated that he was prosecuted for the alleged theft but the charges were dismissed.
6. In cross-examination he stated that the theft was reported to the police who investigated the same and had him charged. The respondent employees were called as witnesses and testified. He was acquitted of the charges. He denied signing the final dues documents. He further denied that the payslip for June was his but did not produce a different payslip.
7. The respondent's witness Mr Joseph Rotich stated that he worked for the respondent as an administration manager. He adopted his statement filed on 23<sup>rd</sup> July 2019 as his evidence in chief. According to him, the claimant was paid all his terminal dues upon dismissal. He was also paid his provident fund. He was paid pro-rata salary for June. Further that the claimant was paid in lieu of leave in June when he left. The payments were captured in the payslip for June. It was his evidence that the claimant was summarily dismissed and that the dismissal was justified.
8. In cross-examination he stated that the security officers caught the claimant stealing and that there was a disciplinary hearing the same day. The disciplinary hearing was not documented. The claimant was not issued with a show cause letter.
9. In re-examination he stated that the claimant was caught carrying the 50kg bag and his supervisor called. No further investigation was necessary.
10. The respondent's second witness Mr Walter Kessam informed the court that he worked for the respondent as manager. He was the claimant's supervisor. According to him the claimant was interrogated by him and the manager.
11. The burden of proof of reasons for termination of employment is on the employer. Further the reasons for termination of employment are

those reasons which an employer at the time of termination of employment genuinely believed to exist and which caused the employer to terminate the services of an employee.

12. The claimant herein was accused of theft of respondent's property. The respondent escalated the complaint to the police who investigated the same and prosecuted the claimant. The claimant denied stealing and termed his termination unlawful and unfair due to the fact that he was acquitted of the charges and further that he was not issued with a show cause letter or taken through a disciplinary hearing.

13. An acquittal from criminal charges does not prevent an employer from terminating the service of an employee on the same facts. The standard of proof in the two processes differ. The standard of proof in criminal cases is beyond reasonable doubt hence higher than proof on a balance of probabilities which is applicable in civil cases.

14. Further, not every termination of employment contract must be done only after a formal hearing process which include issuance of notice to show cause and a formal disciplinary hearing. Where an employee is found in the act of gross misconduct bordering on crime, by a person in authority over him and questioned in presence of other witnesses and subsequently handed over to competent authorities to process him, it may not be necessary to issue a show cause letter and commence a formal hearing just to go through the motion of a process and facts already within the knowledge of the employee.

15. To this effect the court is satisfied that there existed valid reasons for terminating the claimant's service and further that the termination will not be deemed unfair simply because no formal process was gone through after the claimant was found attempting to steal the property of his employer and handed over to the police for prosecution.

16. Concerning the claim for terminal dues and leave, the court is persuaded from the evidence on record that the claimant was paid his terminal dues and issued with certificate of service.

17. The claim is therefore found without merit and is hereby dismissed with costs.

**Dated at Nairobi this 23rd day of October, 2020**

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 23rd day of October, 2020**

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**