



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET

CAUSE NO. 201 OF 2017

HGI.....CLAIMANT

AND

EASTERN PRODUCE KENYA LIMITED.....RESPONDENT

J U D G E M E N T

1. The claimant pleaded that he was employed by the respondent as a general labourer with effect from 1st November, 2002 and worked with loyalty and diligence until 8th March 2016 when the respondent wrongfully and unlawfully dismissed him and refused to pay his terminal benefits.
2. According to the claimant the respondent unprocedurally and unlawfully terminated his service on the grounds that the claimant had family issues and that his wife had gone to report to the divisional manager one Mr Abraham Tabut that she had been assaulted by her husband, the claimant. The claimant thus contended that the termination was without following the right procedure laid down in the Employment Act. The claimant thus sought compensation and payment of his terminal benefits.
3. The respondent on his part denied that the claimant was employed from 1st November, 2002 as alleged and further averred that the claimant was summarily dismissed from employment on 9th March 2016 following sexual harassment of a minor. According to the respondent the dismissal was procedural since the claimant was issued with a show cause letter on 29th February, 2016, a disciplinary hearing was held on 8th March, 2016 and issued with a summary dismissal letter. The claimant was paid his terminal dues upon dismissal.
4. At the oral hearing the claimant stated that he was terminated because his wife reported that they had a fight at home. It was his evidence that he used to have difficulties at work and was frequently changed to different duties. The claimant denied he was subjected to any disciplinary hearing and that the respondent never investigated the allegations against him. He denied he was issued with any show cause letter and denied refusing to acknowledge any letter. He further stated that he used to work from 7 am to 6 pm and was never paid overtime.
5. In cross-examination the claimant stated that he worked for the respondent for fourteen years. It was his evidence that he knew F as his child and that R was his wife. He further stated that he knew Rachel as one of his colleagues but they never lived close by.
6. It was the claimant's evidence that on 15th February, 2016 he was arrested and locked up for four days. He was subsequently charged with writing a love letter to a child. The letter was taken to the police station. He denied receiving any suspension letter and that he never received a letter of invitation to disciplinary hearing. He further denied writing any letter asking for postponement of the hearing.
7. The claimant further stated that he never returned to work upon being released on bond. He left for upcountry because he was beaten and wanted to get treatment. He informed the respondent who gave him leave though he had nothing to show he had been given leave. It was his evidence that he never went back to work because he was told never to. He stayed home for about one year.
8. The respondent's witness Mr Abraham Tabut stated that he worked for the respondent as production manager. It was his evidence that he received a letter from [Particulars withheld] Primary concerning a child at the school. The father wrote to him a letter of sexual nature.
9. The claimant never wrote his name on the letter. He read the contents of the letter. The child was in class 8 at the time. They conducted investigations and found out that the child sought refuge in the neighbours house. The child's mother reported the issue to the police and the claimant was arrested and charged. It was his evidence that the claimant was suspended with full pay during the investigation. The claimant was later invited to attend a disciplinary inquiry. He received the letter but refused to acknowledge the same. The hearing was thus postponed to March 8 because on 1st the claimant came with a union representative, a Mr Olewe. The child also attended. The claimant was after the hearing found him guilty and was informed of the verdict and his rights. The following day he was served with a letter of summary dismissal. He was paid his terminal dues through his account at KCB.
10. In cross-examination he stated that he could not confirm if it was the claimant who wrote the letter. According to him, the claimant

signed for the suspension letter and further that he received the letter of invitation to disciplinary hearing but never acknowledged the same.

11. The claimant averred in his statement of claim that he was terminated for the reason that his wife reported to his place of work that he had beaten her. In his oral evidence in court, it turned out that the claimant was accused of indecent behavior to a minor which turned out to be his own child. He admitted being arrested and charged over the same. The claimant further stated that upon being released on bond, he went upcountry to seek treatment because he had been beaten over the incident. According to the claimant he was verbally granted permission to go upcountry. He stated that he stayed there for one year.

12. It is a cardinal rule of civil process that a party is bound by what they plead. The evidence adduced ought to align with the pleadings and there must not be material deviation or contradiction between what is pleaded and the evidence adduced in support.

13. Further under the Employment Act, the burden of proof that an unfair termination has occurred is on the employee while the proof or justification for reasons for termination is on the employer.

14. The court had the benefit of listening to the claimant during his evidence in chief and cross-examination. The court further had the benefit of observing the demeanour of the claimant and noted that he was evasive and lacked credibility over some of his allegations presented before the court. The claimant thus presented himself to the court as an unreliable witness and his evidence cannot be relied on to support his allegation of unfair termination of employment.

15. On the issue of overtime, this was merely alleged and no evidence was led to support it. Nothing was laid before the court to support the nature of the work the claimant performed which required him to work overtime.

16. In conclusion, the allegations against the claimant were serious and justified summary dismissal and the respondent laid before court material and witnesses which supported these allegations. The claimant on the other hand was contradictory and evasive both in his pleadings and evidence hence did not prove his claim to the threshold set by rules of civil process. The claim is therefore found unmerited and is hereby dismissed with costs.

17. It is so ordered.

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