



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET

CAUSE NO. 83 OF 2017

JOSEPH NDOMBI.....CLAIMANT

AND

KENYA KAZI SERVICES LTD.....RESPONDENT

JUDGEMENT

1. The claimant pleaded that he was employed by the respondent as a Security Guard with effect from 1st November, 2010. He worked until December 2013 when his services were terminated. At the time of termination his monthly salary was Kshs 17,784/=.
2. According to the claimant his service was wrongfully and unfairly terminated by the respondent on allegation that he took over duties from his colleague after he had confirmed everything as per expectation. Among the items left under his custody were 81 vehicle batteries which in the morning when he was handing over duties they were less by 14 batteries. The claimant stated that the allegations were not true and further that he was not subjected to fair and proper hearing as by law required. There was no evidence of investigation availed to him and that the termination letter alleged that the claimant was left with 81 batteries to guard overnight yet the particulars of the alleged batteries was not given.
3. The respondent on its part pleaded that the claimant was its employee as a security guard and as such was placed in a position of trust and responsibility but failed to uphold the same and was from time to time given verbal warnings on various occasions and through letters dated 27th April, 2011, 17th February, 2012 and 19th November 2013 and 28th November, 2013. The claimant at the time of dismissal was assigned duties at Rai Plywoods Limited. On 10th December, 2013 the respondent received information that an incident had occurred in the clients premises involving theft of goods being 14 scrap batteries. The respondent through its mandated officers conducted investigations which pointed out that the claimant was directly or indirectly involved in the incident.
4. The claimant was consequently suspended and invited for disciplinary hearing on 17th December, 2013 and given a notice to that effect. The hearing was conducted on the said date and the claimant attended and was represented by his union's shop steward. The claimant was found guilty of the allegations against him and the panel recommended that he be summarily dismissed.
5. At the oral hearing the claimant stated that he was employed as a Security Guard on 11th November, 2010. His monthly salary was initially Kshs 7,074/= but was increased to Kshs 17,778/= at the time of termination.
6. According to him he was dismissed due to loss of some scrap batteries while he was on duty. One of the managers was accused of stealing the batteries. He was stopped at the gate. The batteries were offloaded as exhibits. They were 83 in number. It was his evidence that he asked for reinforcement but none was brought. When on patrol the batteries were tampered with. Some disappeared. He denied being involved in the disappearance of the 14 batteries.
7. He denied being issued with a show cause letter and taken through any disciplinary hearing. He denied receiving any letter of invitation for a disciplinary hearing. He appealed against the dismissal but the appeal was unsuccessful. He further stated that upon dismissal he was never paid his terminal dues.
8. In cross-examination he stated that he had previous warning letters. While on duty he was not only required to watch over scrap batteries but other items such as motorcycles. The loss occurred when he had a previous warning letter but it had expired. He further stated that he had a fight with an employee of Rai Plywood and while he was in West Kenya there were incidents of being found asleep while on duty.
9. Respondent's witness Mr Martin Simiyu stated that he was the respondent's operations manager and that he recorded a witness statement on 6th March 2020 which he sought to adopt as his evidence in chief. He also sought to rely on documents filed with the claim. According to him the claimant was not a very good worker. He had a number of warning letters over sleeping while on duty. He further stated that the

claimant fought their client's employee and was also involved in theft. The claimant was assigned to watch over some scrap battery. In the morning some 14 of the batteries were missing and the claimant could not account for them. The issue was investigated and it was established that the claimant failed in his duties. The claimant was subsequently invited for a disciplinary hearing which he attended together with his Union's shop steward. He however refused to sign for the proceedings of the meeting. Upon termination the claimant was paid all his terminal dues.

10. In cross-examination he stated that the 1st? warning was in November, 2012 and concerned sleeping while on duty. The 3rd? warning was on stealing and the reason for which he was dismissed. The claimant was issued with a show cause letter and it was before the court.

11. The claimant herein alleged that he was dismissed from employment over allegation of loss of some scrap batteries he was assigned to guard. The claimant did not deny he was assigned to guard the batteries but only denied involvement in the loss.

12. The respondent on the other hand alleged that the claimant was not a good worker and had several cases of indiscipline at work over which he had been issued with warning letters. The respondent produced these warning letters as part of the evidence to support the justification for the claimant's summary dismissal. The claimant neither filed reply to the memorandum of response nor disputed this documents before the matter came up for trial. The denial of knowledge of these documents at the trial and what they purport to prove did not therefore appear in good faith.

13. The duty of a security guard is to watch over premises or property assigned to be guarded to best of the guard's ability. The claimant herein did not deny that he was assigned to watch over 81 scrap batteries. He further did not deny that in the morning some 14 of the batteries he was assigned to watch over were missing. He only denied involvement in the loss but failed to account how the loss could have occurred. This coupled with warning letters where the claimant had been accused of sleeping while on duty, proves negligent performance of duty by the claimant.

14. Under section 43(2) of Employment Act, the reason or reasons for termination of a contract are matters that the employer at the time of termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee. As observed the work of a security guard requires high level of alertness. Accusation of being asleep while on duty is strong sign of lack of alertness and negligent. This could have contributed to the loss of some of the scrap batteries.

15. To this extent, the Court finds that there existed justifiable reasons for termination of the claimant's employment.

16. Concerning the procedure followed, the court is reasonably persuaded from the documents attached in support of the respondent's defence that proper procedure was followed.

17. In conclusion the court finds this claim without merit and the same 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