



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NUMBER 914 OF 2014

AYUB ONYANGO ONYONGE.....CLAIMANT

VERSUS

ALLPACK INDUSTRIES LIMITED.....RESPONDENT

JUDGEMENT

1. The claimant pleaded that he was employed by the respondent from 2010 until 17th January 2014 when the respondent terminated his services without any warning or notice.
2. According to the claimant on 14th June, 2013 while in the course of his employment, he got involved in an accident and suffered injuries. He was treated and discharged and continued to work as he received treatment.
3. On 17th January the respondent terminated his services without any prior warning or notice.
4. The respondent on his part pleaded that the claimant was appointed as maintenance artisan for a period of three months after which the contract would automatically cease. The respondent further pleaded that the contracts lapsed by effluxion of time and the claimant was offered other contracts one being by a letter dated 19th September, 2013 which was to run for six months from 1st July, 2013 and lapse on 31st December, 2013.
5. On 18th December, 2013 the claimant was dismissed for being involved in stealing and handling stolen property as well as bringing outsiders to the respondent's premises at night in breach of security procedures. The respondent further averred that the claimant took leave during his employment.
6. In his oral evidence in court the claimant additionally stated that after his injury he used to do light duties. A claim arose that he was underperforming and used to refuse heavy duties. He was called to the Human Resource Office and told work had reduced and was to go home. He was never given a termination letter and denied stealing a phone. According to him, the theft occurred during the night shift while he was in the day shifts.
7. In cross-examination he stated that he was never given a show cause letter. He stated that he was accused of bringing strangers to the respondent's premises and asked to explain. He denied receiving the dismissal letter.
8. The respondent's witness Mr Moses Boi stated that he worked for the respondent as an administrator. According to him the claimant was accused of theft of a mobile phone belonging to a colleague. He also allowed outsiders into the respondent's premises. According to him the claimant was issued with a show cause letter to which he responded but the respondent was not satisfied with the response hence he was dismissed. He further stated that the claimant went on leave during employment. Further that the claimant was not paid his terminal dues because he did not clear with the respondent.
9. In cross-examination he stated that investigation and evidence showed that the claimant stole the phone and that it was returned to the owner.
10. The claimant herein was accused of theft of a colleague's phone and for bringing strangers to the respondent's premises at night. In his evidence in court he stated that after getting injured at his place of work he was accused of underperforming. According to him, he refused heavy duties. He was called to the Human Resource Office and was told that a report from his department showed that work had reduced and he was to go home. He denied being issued with any termination letter and further denied stealing any phone.

11. Whereas the claimant denied receiving the show cause letter dated 17th December, 2013 accusing him of theft of a colleague's phone and bringing outsiders into the respondent's premises; his own letters found at pages 23 and 24 of the respondent's bundle of documents are addressed to the Human Resource Officer of the respondent and are responses to the very accusations against him. It cannot therefore be true that the claimant never received the show cause letter as claimed otherwise what was he responding to if he never received the said letter.

12. The accusations against the claimant were serious and were such accusations as would justify summary dismissal.

13. The court is therefore of the view that the respondent was justified in dismissing the claimant hence the claim is found without merit and is hereby dismissed with no order as to costs.

14. The respondents shall however compute and pay the claimant his terminal dues once he clears with the respondent as stated in the dismissal letter.

15. It is ordered.

Dated at Nairobi this 25th day of January, 2019

Abuodha J. N.

Judge

Delivered this 25th day of January, 2019

In the presence of:-

..... for the claimant

..... for the Respondent

Abuodha J. N.

Judge