



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

INDUSTRIAL CAUSE NO. 315 OF 2015

(Before Hon. Justice Mathews N. Nduma)

BENARD ANDITI MARERACLAIMANT

VERSUS

KIBOS SUGAR AND ALLIED INDUSTRIES.....RESPONDENT

J U D G M E N T

1. Suit was filed on 23rd September 2015 by the claimant praying for punitive and general damages for unlawful dismissal and payment of terminal benefits to wit:

(i) One month salary in lieu of notice Kshs 15,500.

(ii) Leave and medical allowance.

2. The claimant testified that he was employed by the respondent on 16th June 2008 as a plant operator (KOMATSU) and that he worked continuously and diligently until 15th April 2013, when the respondent without any reason(s) given and without following any fair procedure dismissed the claimant from employment.

3. The claimant produced a pay slip for July 2013, showing that his gross monthly salary was Kshs 16,918 and he was deducted NHIF and NSSF dues and relied on his witness statement filed on 6th October 2015 as his evidence in chief.

4. The claimant also produced show cause letter dated 16th May 2013 given to him by one David Mol Odongo. He was accused of knocking bell (Tractor) No. UAR 547X while operating Hyundai KHMA 745A. The respondent accused him of negligence and failure to take care in operating machinery.

5. The claimant denied that he had admitted liability for the accident in his testimony before court and denounced letter produced by the respondent in which he admitted liability. He said that it was the tractor that hit the crane he was operating. He told the court that he was dismissed by his supervisor immediately after the accident and was paid Kshs 15,000 in his account. He said that he was not paid house allowance, leave allowance and medical allowance while he worked and claimed the same. The claimant testified that the dismissal was unlawful and unfair and he should be paid damages.

Defence

6. The respondent filed a statement of response on 20th November 2015 and called RW1 David Mol Odongo to testify. He told the court that he was the human resource manager of the respondent from January 2008. He relied on a written statement dated 20th November 2015 as his evidence in chief. RW1 told the court that the claimant was not dismissed from employment but he deserted duty after causing an accident. That the claimant was given a notice to show cause letter and on 17th May 2013 he admitted his mistake and agreed to meet the costs of the damage. That the claimant thereafter deserted work. He came back on 20th April 2014 and was given certificate of service.

7. That on 4th April 2015 the claimant rejoined the company as a KOMATSU operator and while on duty, on 7th April 2015, he again while operating the same plant KHMA 745A HYUNDAI, he knocked two other motor vehicles KBG 726K and KBX 260Z causing damage to both motor vehicles.

8. The claimant's employment was thereafter terminated on 30th May 2015. The claimant had been re-employed upon intervention by the union.

9. RW1 testified that the claimant was paid all leave dues from 2009 to 2013 and none was due.

10. That the claim be dismissed with costs.

Determination

11. The issues for determination are:

(i) Whether the employment of the claimant was terminated for a valid reason and in terms of a fair procedure.

(ii) Whether the claimant is entitled to the reliefs sought.

Issue i

12. From the totality of oral and documentary evidence before court including the testimony by the claimant and that by RW1 David Mol Odongo, the Human resource manager of the respondent from January 2008, it is clear that the claimant caused an accident in the course of his duty on 15th April 2013. The claimant was issued a notice to show cause on 16th May 2013. The claimant admitted liability and agreed to pay the costs of repair for the damage caused to the tractor by the crane he drove.

13. The claimant was reinstated back to work on 4th April 2015, following intervention by the union. The claimant again caused another accident on 7th April 2015 and his employment was terminated on 30th May 2015.

14. The claimant filed suit with respect to the earlier separation on 15th April 2013. It is clear that the separation between the claimant and respondent following the accident on 15th April 2013 was resolved by the parties upon intervention by the union and the claimant was reinstated back to work.

15. There is no case before court regarding the second termination on 30th May 2015.

16. The claimant did not deny that he was indeed reinstated back to work on 4th April 2015.

17. It is the court's considered view that the claimant has failed to discharge the onus placed on him in terms of *Sections 47(5) of the employment Act, 2007* as read with *Sections 107 and 108 of the evidence Act, Cap 80 laws of Kenya* to demonstrate on a balance of probabilities that he was wrongfully terminated from employment on 15th April 2013 as pleaded in the statement of claim.

18. The respondent has sufficiently rebutted the claim put forth by the claimant by showing that that separation on 15th April 2013 was resolved and the claimant reinstated back to work until his employment was again terminated in the year 2015, a matter not placed before court by the claimant.

19. Accordingly, the court finds that the claim for unlawful and unfair termination of employment of the claimant by the respondent on 15th April 2013 has no merit and is dismissed.

Issue ii

20. With regard to the reliefs sought by the claimant, the court is equally not satisfied that the claimant has adduced any evidence to support grant of the reliefs sought.

21. The pay slip for July 2013 produced by the claimant indicates that the claimant was paid a basic salary and house allowance. No evidence was placed before court with regard to any specific leave allowance not paid to the claimant and the justification for the payment. Similarly, there is no basis for the claim of medical allowance. These claims are dismissed.

22. In the final analysis, the entire suit is dismissed for lack of proof.

Judgment Dated, Signed and delivered this 21st day of February, 2019

Mathews N. Nduma

Judge

Appearances

R.O Okungu for the Claimant

Mr. Onyango for Respondent

