

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 263 OF 2017

JOHN MUTHIKE NJIRU.....CLAIMANT

VERSUS

MWEA RICE MILLERS LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent seeking recompense for his dismissal which he asserts was unlawful. He averred that he was not given an opportunity to dispute the truthfulness of the accusation giving rise to the dismissal and thus failed to prove the reason for the termination was valid. He asserts that the Respondent breached a collective bargaining agreement and failed to issue him with a letter of appointment, provide him with a payslip, failing to pay him on public holidays and failing to adhere to working hours making him work overtime without pay. He thus sought the unpaid notice – Kshs. 10,600/-, unpaid salaries for 5 months – Kshs. 53,000/-, accrued annual leave – Kshs. 25,685/-, public holidays for 3 years Kshs. 10,600/-, weekly rest days for 3 years – Kshs. 55,199/- and weekly for 16 months Kshs. 42,666/- and compensation for 10 months for wrongful termination – Kshs. 106,000/-, costs of the suit plus any other relief the court may deem fit to grant.

2. The Respondent averred in defence that the Claimant deserted employment without any reasonable cause and failed to notify the Respondent that he was involved in Cr. Case No. 268/2016 at Wang’uru causing him to be absent from work. The Respondent asserts that the Claimant failed to alert it that he had ceased being its employee. It was averred that the Claimant’s claim was fully settled at the County Labour office at Kerugoya on 30th September 2017 and the current claim was therefore an abuse of the court process. The Respondent thus urged the dismissal of the suit with costs.

3. The Claimant testified that he was working for the Respondent and that he fell ill and on return to work was told that he had been dismissed. He reported the matter to the Labour Office and was called for conciliation. He stated that the Respondent paid Kshs. 80,802/- and that according to his calculation the Respondent was meant to pay Kshs. 261,004/-. He denied that he was arrested and charged hence the absence from work. He stated that he took part payment hence the suit.

4. The Respondent called Lawrence Chogo who stated that he was employed in marketing by the Respondent. He testified that the Claimant was well known to him and that the Claimant left his workplace and was absent for a while only to be found to have been arrested because of a land matter. He stated that the Claimant never went back to work and that he took the sum agreed at the Labour Office in settlement of his claim. In cross-examination he stated that the overtime and other claims were considered and computed including the weekly rest days.

5. The Claimant submitted that he was paid monthly though the pay was computed daily and that he was dismissed one morning. The Claimant sought the intervention of the Labour Office and submitted that the Respondent refused to comply with law necessitating the suit. He submitted that the verbal dismissal was without notice and by so doing contravened the provisions of Section 35(1)(c) and (3) of the Employment Act as well as the provisions of section 41 of the Employment Act. He submitted that there was no substantive justification or procedural fairness. The Claimant thus sought the grant of the prayers in his suit.

6. The Respondent submitted that the Claimant failed to prove his case and that relying on the definition of burden of proof in **Halisbury’s Laws of England 4th Edition Volume 17 para 13** the Claimant had failed to satisfy the court of the likelihood of the truth of his case. The Respondent relied on the case of **Kennedy Ouru Okise v James Finlay (K) Limited [2016] eKLR** where the court dismissed the suit on account of the failure of the Claimant to prove his case.

7. The evidence and testimony adduced clearly show that the Claimant failed to prove his case as he did not establish that he was dismissed unfairly. The Claimant had a burden to prove that there was lack of fairness in the dismissal but his absence at the work place was unexplained. He apparently had been arrested and incarcerated for a matter that was unrelated to his employ and thereby he failed to go to work. He lied that he was hospitalised at Embu Hospital. He nevertheless was away from work whether on account of illness as he asserts or whether on account of incarceration. He thus absented himself from the work place and on reporting the dispute to the Labour Office he did not accept the determination made by the Labour Office. In my view, the suit fails on a balance of probabilities. It is dismissed but with no order as to costs.

It is so ordered.

Dated and delivered at Nyeri this 11th day of March 2019

Nzioki wa Makau

JUDGE

I certify that this is a
true copy of the Original

Deputy Registrar