



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU

CAUSE NO.247 OF 2014

JACKSON MBAZA MBALICLAIMANT

VERSUS

GILANI'S SUPERMARKET LIMITEDRESPONDENT

JUDGEMENT

The claimant was employed by the respondent as a general worker in April, 2000 at a wage of ksh.7, 179.00 per month. The claimant worked until December, 2011 when he was terminated from his employment by the respondent. the claimant signed up to join a trade union but the respondent issued circular which would have compromised the chances of joining a trade union which led to his being victimised, harassed and issued with warnings over non-existent mistakes.

The claim is that there was an order barring the respondent from victimising, terminating or dismissing the claimant until cause No.969 of 2011 (Nairobi) was determined.

The claimant was however victimised for joining the trade union and his constitutional rights infringed.

The claimant is seeking the following;

- a) Pay for days worked in December, 2011 Ksh.1,914.40;
- b) House allowance April 2013 Ksh.287.20;
- c) Notice pay Ksh.7,179.00
- d) Service gratuity 2 years Ksh.7,179.00
- e) Compensation; and
- f) Costs.

The claimant testified that he joined trade union and as a result he was suspended over alleged refusal to sign a circular but such details had not been brought to his attention. Kenya Union of Commercial Foods and Allied Workers had filed Cause No.969 of 2011 Nairobi and the respondent had been restrained from victimising the employees but the respondent refused to obey the orders.

Upon dismissal, the claimant was paid his dues at ksh.18, 520.00 though there was no breakdown. He reported the matter to the labour officer but the dues paid did not cover notice pay, severance pay and compensation.

Upon cross-examination the claimant testified that from the year 2000 to 2011 he was employed by the respondent. in Cause No.29 of 2017 he has filed claim against Menengai Oil Refineries and allege that Menengai oil Refineries had employed him from the year 2004 to 2016 but such claims relates to a different company separate from the respondent. at Menengai Oil Refineries the claimant was a general worker and would work from 2pm to 10pm. In Cause No.29 of 2017 the claim is that the claimant was employed on full time basis and paid a daily wage of ksh.156.00.

The claimant also testified that on 9th December, 2011 he was suspended, there was a meeting and then a letter terminating employment was issued. He was not aware the matter was settled by the union which included other employees. The letter by Dickens Atela that the matter had been settled is not correct as the claimant was not involved in the settlement. He was paid Ksh.18, 520.00.

The defence is that the claimant's union, Kenya Union of Commercial, Food and Allied Workers took over the issue of the claimant's dismissal, registered a dispute with the labour officer and on 21st and 22nd December, 2011 the same was amicably settled. The claimant's dues were agreed and settled in full. the claimant has since signed a discharge voucher discharging the respondent of any claims.

There is no dispute between the parties and the claim herein is filed with wanton dishonesty.

Zedrick Waweru Nduati the human resource manager for the respondent testified that the claims made by the claimant are not honest. From the year 2000 to 2011 the claimant was with Menengai Oil Refineries as he has claimed in Cause No.29 of 2017 where he confirmed that he was employed with such company from the years 2004 to 2016. He cannot have been with two employers on full time basis as claimed herein. Based on the work hours, the claimant cannot have been working for two (92) employers.

In December, 2011 there was an issue with the union. This led to serious threats amongst employees as some wanted to join the union while others did not and this resulted into two work camps. The work environment became hostile.

The respondent issued a memo directing employees to stop union politicking. All employees were required to sign the memo. This was to ensure the keeping of the peace. The claimant refused to sign. he was suspended 9th December, 2011. The claimant was invited to a meeting so that he could sign the memo but he refused and this resulted in dismissal from employment.

Mr nduati also testified that the union reported the matter to the labour officer and following several meetings, there was a settlement involving 4 employees including the claimant. It was resolved that the claimant be paid ksh.18, 520.00 as his final dues and he acknowledged the payment in settlement.

At the close of the hearing, both parties filed written submissions.

The claimant confirmed he was paid ksh.18, 520.00. there is however no breakdown provided by the respondent as to what such payment covered.

The claimant was terminated in his employment with the respondent by letter dated 15th December, 2011. He confirmed the matter was reported to the labour officer. There is letter by Labour officer dated 21st December, 2011 in this regard.

Subsequent to the letter by the labour officer the claimant accepted a payment of ksh.18, 520.00 on 23rd December, 2011. Such cannot be for upkeep as suggested in evidence as he had been suspended and invited for hearing over matters raised with him with regard to industrial peace following threats between employee with regard to whether to join a trade union.

By accepting the payment of final dues while a dispute had been lodged with the labour officer and while the claimant was aware of his right to file suit to urge his case in the event his rights to join a trade union had been compromised, the claimant compromised his claims. the owing dues therefore paid, the claimant cannot raise similar case with the court unless he is clear as to what was not settled.

By settlement of the claims at the end of employment, the claimant was entitled to pay for days worked up and until 15th December, 2011 all being ksh.4,128.00 based on the gross wage.

On the claims made service gratuity is not established as to whether after joining the union there was a collective agreement making provisions for such benefit as the payment statement filed is evidence statutory dues were being paid.

With the settlement of terminal dues, notice pay became discretionary upon the respondent to pay. With such settlement, the claim for compensation has no basis. Certificate of service is however due to the claimant whatever the reasons leading to termination of employment.

The payment of ksh.18, 520.00 on the basis that the claimant is only entitled to pay for days worked at ksh.4, 128.00 is a generous payment.

Accordingly, the claimant having been paid final dues over and above what is lawfully due has no justification to claim as set out in the Memorandum of Claim. The claims made are hereby dismissed. Each party shall bear own costs.

Delivered at Nakuru this 7th day of March, 2019.

M. MBARU JUDGE

In the presence of: