



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NUMBER 670 B OF 2014

STEPHEN NDUNDA MALUKI.....CLAIMANT

VERSUS

ROMAGECO (K) LIMITED.....RESPONDENT

JUDGEMENT

1. In the memorandum of claim filed on 25th April, 2014 the claimant averred that he was employed by the respondent as an accountant/cashier from August, 1977 to 22nd January, 2014. His salary at the time of termination was kshs 95,000/= per month. According to him, the respondent terminated his service without any reasonable cause.
2. The respondent in its memorandum of response filed on 9th June, 2014 averred that the claimant was dismissed from employment because of gross misconduct and after having been warned severally by the respondent but took no heed. According to the respondent the claimant stole an estimate sum of Kshs 341,655/= and that the claimant was irresponsible in his duties and failed to improve despite being accorded opportunity to improve.
3. In his oral evidence in court, the claimant stated that he was the group accountant at the time he left. It was his evidence that he was the custodian of the petty cash which was Kshs 400,000/= and that Kshs 188,700/= was part of the float and Kshs 142,059/= was to be banked. He received the two envelopes and by the time of banking he found the envelopes missing. It was his evidence that the respondent never had any safe. He further stated that he had no exclusive office and that they were in open office.
4. According to him, he locked the money in his drawer and he presumed someone must have opened it. He informed his boss Mr Rajendra Parma of the loss and he told him to wait for the CEO since there was nothing he could do. When the CEO came he told him to wait until Monday before a decision could be made.
5. On Monday a meeting was called but he was not called to the meeting. The incident was reported to the police and he was asked to record a statement. He was however not charged with any offence. He was subsequently terminated. His final dues were calculated at Kshs 31,130/= but he never collected them. In cross-examination he stated that he was in the office the whole time when the money got lost but could occasionally go down stairs. He noticed the money was missing when he wanted to go to the bank. His drawer was however still locked and no one else had access to his drawer keys.
6. On the part of the respondent the parties agreed by consent to adopt the witness statement filed by William Muchina without calling him. In the material part, Mr Muchina stated that the respondent had a disciplinary meeting with the claimant concerning the loss after which it was resolved the claimant was negligent in his duties which amounted to gross misconduct hence his services was summarily terminated.
7. Negligence occasioning loss of employers property is a valid ground for summarily dismissal. The respondent was justified to dismiss the claimant if it was not satisfied with the explanation by the claimant concerning the circumstances of the loss. The court does not delve into the merit weighting of reasons for dismissal provided they are reasonable enough and any reasonable employer for those reasons would dismiss.
8. Concerning the procedure followed, the court is of the view that in as much as no formal disciplinary hearing took place, the claimant was called to a meeting where the issue was discussed. He further recorded a statement with the police concerning the loss. It cannot therefore be gainsaid that the claimant was aware of the reason for his dismissal and that he was given an opportunity to defend himself before the decision to dismiss him was reached.
9. The claim is therefore found without merit and is hereby dismissed with costs. The claimant is however entitled to his terminal dues as calculated by the respondent.

10. It is so ordered.

Dated at Nairobi this 17th day of May 2019

Abuodha J. N.

Judge

Delivered this 17th day of May 2019

Abuodha J. N.

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.