



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE 1181 OF 2014

ALEX ALII WILLIAM.....CLAIMANT

VERSUS

KERBROOK GARMENT

MANUFACTURERS LIMITED.....RESPONDENT

JUDGEMENT

1. The claimant averred that he was employed by the respondent as a cleaner in April, 2005. On 5th July, 2013 while on duty he was called by the accountant one Alfred to be allocated other duties. When he saw Alfred he was asked to go cut manila paper for packing shirts. He went to complete his previous duties before he could report to new duties.

2. After about 3 minutes and before he could finish his cleaning task, Alfred called him and accused him of insubordination. He was further instructed to surrender his dust coat and go home to report back the following day for further instructions. When he returned the next day he was handed a dismissal letter. According to the claimant no opportunity whatsoever was availed to him to answer the accusations against him before action was taken.

3. The respondent filed a defence in which it stated that the claiming had been asked to cut shirts backs which was hid duty but was found seated and chatting with colleagues whose operations had been halted by a power blackout. When asked for any explanation, the claimant never responded. According to the respondent, the termination was not unlawful as the claimant had wilfully neglected to obey a lawful order hence amounted to insubordination warranting summary dismissal.

4. The hearing of this matter proceeded on 10th March, 2016 and the claimant gave oral evidence in which he reiterated his averments in the memorandum of claim. He further stated in examination in Chief that during the time he was employed he only received one warning letter. In cross-examination he admitted that he was warned for leaving his workplace without permission and that he used to help others once he completed his duties.

5. It was further his evidence that he did not tell his supervisor that he was going to close the taps. He denied the union computed his dues and did not know about the letter from the union computing his dues. After the close of the claimant's case the matter was adjourned to 4th May, 2016 for defence hearing. It apparently did not proceed on that day and was fixed afresh for defence hearing on 23rd August, 2016.

6. The court was on recess during the period hence the matter was rescheduled on 14th November, 2017. On this date only the claimant's counsel was present. The matter was therefore set for mention on 18th January, 2018 for allocation of a new hearing date for defence. On 18th January, 2018 only the claimant appeared for allocation of hearing date. On 9th July, 2018 the court ordered the matter closed and directed that parties file and exchange submissions. Only the claimant filed submissions.

7. In a claim for unfair termination of service, the burden of proof that there existed valid reasons for the termination of service rests on the employer. In this particular case, apart from averments in the memorandum of response, the respondent never tendered any evidence to rebut the claimant's averments. They therefore failed to discharge the burden cast upon them by law.

8. The court will therefore find that there was unfair termination of service and award the claimant as follows:

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|---|---------------|
| a. One month's salary in lieu of notice | 14,257 |
| b. Six months' salary for unfair termination of Service | <u>85,542</u> |

c. Costs of the suit

9. Items (a) and (b) to be subject to taxes and statutory deductions but shall attract interest at court from date of judgement until payment in full.

Dated at Nairobi this 28th day of June, 2019

Abuodha J. N.

Judge

Delivered this 28th day of June, 2019

Hellen Wasilwa

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.