



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 1518 OF 2016

PATRICK AMBENGE KIVUZE.....CLAIMANT

VERSUS

IMPALA GLASS INDUSTRIES LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Wednesday 31st July, 2019)

JUDGMENT

The claimant filed the memorandum of claim on 03.08.2016 through Mogeni & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) Payment of salary arrears.
- b) Three months' pay in lieu of notice.
- c) Terminal benefits.
- d) Outstanding leave allowance.
- e) General damages.
- f) Costs of the suit.

The respondent filed the statement of defence on 29.08.2017 through the Federation of Kenya Employers. The respondent prayed that the claim herein be disallowed with costs to the respondent.

First, the parties are in agreement that they were in a contract of service. The respondent employed the claimant as a loader in 1999 and later promoted him to a clerk. The claimant served until late 2014 when his services were terminated. His last monthly pay was Kshs.22, 148.19 as pleaded for the respondent.

Second, the claimant testified that on 05.09.2014 he fell ill and he was given permission to go for treatment. He remained on sick leave as granted by the doctor. On 29.09.2014 he received the respondent's letter to report back on duty in 24 hours. The letter was delivered to his home by a co-worker. On 30.09.2014 he was not able to report at work but he reported on 01.10.2014 and he was given a letter of summary dismissal effective 30.09.2014 and on account of refusal to report to his place of work. On 09.10.2014 the respondent wrote conveying that the management had decided to give him 25% of his service on humanitarian grounds and in view of the summary dismissal. The claimant testified that the salary for September had been paid.

The claimant testified that his last day at work was 05.09.2014 when he asked for permission to be away. He confirmed that the gate pass had not been authorized at all and his time out on 05.09.2014 had been at 8.00am. He further testified that he did not recall the time he had left the respondent's premises on 05.09.2014 and that he had reported on duty at 8.00am and he could not recall the time he had sought permission on that day. While testifying that he had reported at 08.00am he also admitted that the gate pass he relied on for authority to leave showed that he had left at 8.00am. When pressed in cross-examination he stated that he wanted it clarified that he reported at work at 7.30am. He further testified that he left on 05.09.2014 to see a doctor because he was unwell but then he actually saw the doctor on 08.09.2014 and despite having the telephone number for the human resource manager, he failed to inform the manager his predicament and absence on account of ill-health. He confirmed between 08.09.2014 to 15.09.2014 were 7 days but the documented sick-off chit indicated 5 days. After being attended to at the hospital he confirmed that he failed to inform the human resource manager. While testifying that he was admitted at

hospital from 08.09.2014 to 13.09.2014, the claimant testified that he had no discharge notes. In September 2014 he worked for 5 days only but he had been paid the full monthly salary.

The claimant testified that on 01.09.2014 he attended a meeting at the human resource manager's office and his absence was discussed. There after he was given a dismissal letter. He then signed acknowledging receipt of his final dues.

The Court has considered the evidence by the claimant and by the respondent. It was clear that the claimant left his place of work on 05.09.2014 without authority because the gate pass was never signed. The claimant cannot be believed when he says he was unwell because he did not go to hospital on 05.09.2014 but purportedly went to hospital on 08.09.2014. Further after the alleged 5 days of admission, he did not produce the discharge report. Throughout the period of absence he failed to inform his employer. Even after the employer gave him 24 hours to report back on duty he failed to do so and the employer was lenient in paying the full September 2014 salary and thereafter the agreed terminal benefits.

The Court finds that the summary dismissal was not unfair as due procedure was accorded to the claimant and the reasons were valid. The claimant was clearly the captain and architect of his summary dismissal. The Court finds that he contributed 100% to his dismissal. His suit must fail with costs. In conclusion the claimant's suit is hereby dismissed with costs in favour of the respondent.

Signed, dated and delivered in court at **Nairobi** this **Wednesday 31st July, 2019.**

BYRAM ONGAYA

JUDGE