



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 831 OF 2015**

**GEORGE G. GACHARA.....CLAIMANT**

**- VERSUS -**

**NATIONAL MUSEUMS OF KENYA.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 30th August, 2019)

**JUDGMENT**

The claimant filed the memorandum of claim on 19.05.2015 through Boniface M. Kavuvi, Secretary General for Kenya Union of Commercial Food and Allied Workers. The claimant prayed for judgment against the respondent for:

- a. Reinstatement in respondent's service as an electrician without loss of seniority and service.
- b. Compensation of 12 months' wages for wrongful dismissal occasioning suffering and mental anguish for alleged ills he was not aware of.
- c. Costs of the suit.

In alternative the claimant prayed for:

- a. Terminal benefits be provided for as per the collective agreement.
- b. 12 months' gross wage by way of compensation for wrongful dismissal.
- c. Any other benefit which the Court deems fit in the ends of justice.
- d. Costs of the suit.

The memorandum of response was filed on 25.05.2018 through N.M. Kamwendwa & Company Advocates. The respondent prayed that the suit be dismissed with costs plus interest on costs.

There is no dispute that the respondent employed the claimant as an Artisan Grade II on 01.11.1993. It is also clear from the evidence that on 05.08.2013 the claimant's co-employee one Benard Mailu was arrested by the guards at the gate and found in possession of 8 floodlight bulbs. The statements on record by the guard on duty one Kioko Mwange states that the claimant asked the guards to drop the case by offering a bribe. The statements by the guards show that the claimant had conspired with Mailu to steal the 8 floodlight bulbs.

The claimant received a show-cause notice dated 07.08.2013 requiring him to reply in 7 days failing he'd be dismissed on account of conspiring with Benard Mailu to steal the 8 floodlight bulbs and for attempting to bribe the guards to drop the case. By the letter dated 08.08.2013 the claimant was interdicted from duty on half basic pay. It is recorded that at the disciplinary hearing the evidence was that the claimant had been seen at one of the stores packing unknown items in a bag and thereafter Mailu was arrested at the gate with a bag whose contents were the 8 floodlight bulbs. Further it is recorded that the claimant had attempted to bribe the security guards to drop the case. The union representative at the disciplinary hearing pleaded that the claimant be pardoned because Mailu had not implicated him but the committee found that the claimant was the master mind of ring of cartel involved in stealing the respondent's electrical hardware. In the instant case, the committee found that he had acted to design the theft of the 8 bulbs. Thus, the claimant was dismissed by the letter dated 30.09.2013 on the ground of conspiring with the said Mailu to steal the 8 bulbs.

The claimant's union reported a trade dispute but the appointed conciliator failed to reach an amicable settlement hence the present case.

The parties opted to rely on the pleadings, the documents and the submissions.

In absence of any further evidence, the Court returns that the respondent has established that the claimant was accorded due process of a notice and a hearing as per section 41 of the Employment Act, 2007. Further the record of the disciplinary proceedings shows that the claimant did not rebut the respondent's case as per the statements on record by the eye witnesses that the claimant had been seen packing unknown items in a bag which was later found in possession of Mailu at the time of arrest and with the 8 bulbs in issue. The Court finds that the record of the disciplinary hearing does not show that the claimant denied or rebutted the evidence of the primary witnesses that he attempted to bribe the guards for them to drop the case. In the circumstances the Court returns that the on a balance of probability, the respondent has established that as at the time of the termination there existed a valid reason to dismiss the claimant as per section 43 as read with section 45 of the Employment Act, 2007. The Court finds that the dismissal was not unfair both in procedure and on merits or substance.

In view of all circumstances of the case including that the conciliator had recommended a normal termination and parties did not call witnesses, each party shall bear own costs of the suit. In conclusion judgment is hereby entered for the respondent against the claimant for dismissal of the suit with orders each party to bear own costs.

**Signed, dated and delivered** in court at **Nairobi** this **Friday 30th August, 2019**.

**BYRAM ONGAYA**

**JUDGE**