



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 838 OF 2014**

**FRED MAKORI ONDARI.....CLAIMANT**

**VERSUS**

**RILEY SERVICES LIMITED.....RESPONDENT**

**JUDGMENT**

1. This Cause was heard on 3 July 2019.
  2. Fred Makori Ondari (Claimant) and Mary Webuye, Human Resources Manager with Riley Services Ltd (Respondent) testified and also adopted their written witness statements.
  3. The Claimant filed his submissions on 31 July 2019 while the Respondent filed its submissions on 30 August 2019.
  4. The Court has given due consideration to the pleadings, evidence and submissions and identified the Issues for determination as examined hereunder.
- Unfair termination of employment**
5. The Claimant was employed by the Respondent as a driver around 6 July 2009.
  6. On 16 August 2012, the Respondent's Operations and Training Manager issued a summary dismissal letter to the Claimant.
  7. The dismissal letter indicated that the Claimant had appeared before the Directors for interrogation on 24 May 2012, and had admitted that he had carried unauthorised passengers in an official vehicle.
  8. To show that the Claimant had admitted to the allegations, the Respondent's witness produced a letter dated 25 May 2012 written by the Claimant. The Claimant tendered an apology in the letter.
  9. The Claimant did not agree with the version of events as narrated by the Respondent's witness. He pleaded and testified that he was dismissed on 24 May 2012 without any notice or being afforded an opportunity to be heard.
  10. On whether he admitted to the allegations leading to dismissal, the Claimant stated that he was tricked into writing the letter on the promise that he would be allowed to resume his duties, and that after copying the contents from an initial letter by the Operations Manager, he was directed to go home and wait to be called.
  11. The Claimant denied that he was issued with the summary dismissal letter dated 16 August 2012.
  12. The Claimant admitted that he attended a meeting involving the Managing Director and the Operations Manager after being summoned by a Controller, and that the agenda of the meeting was the allegation that the Managing Director had found him the previous day carrying unauthorised passengers.
  13. Although contending that he was not afforded an opportunity to make representations, the Court is of the view that it is more probable that the session was to afford the Claimant an opportunity to respond to the allegations of having given a lift to unauthorised passengers.
  14. The Court is satisfied that the Respondent was in substantial compliance with the requirements of section 41 of the Employment Act,

2007 despite the fact that minutes of the meeting were not produced in Court.

15. And since this was a case of summary dismissal, the *written notice of termination* envisaged by section 35(1)(c) was not applicable.

16. On the substantive fairness of the dismissal, the Court is of the view that the admission by the Claimant was sufficient.

17. The Court finds no veracity in the assertion by the Claimant that he was tricked or forced to copy the contents of the admission/apology letter. Merely stating that there was coercion or duress without sufficient evidence would not prove the allegation of coercion.

### **Appropriate remedies**

#### **Reinstatement**

18. With the conclusion that the summary dismissal of the Claimant was fair, reinstatement is not available as a remedy.

#### **Accrued benefits and other entitlements**

19. The Claimant did not lay any evidential or contractual foundation to what he pleaded as *accrued benefits* and other entitlements.

20. Even general damages would not be awardable without proof of any wrongful act/injury.

21. The Court notes that the Claimant was paid Kshs 7,494/50 on account of terminal dues in terms of the dues outlined in the letter of dismissal.

#### **Certificate of Service**

22. A *certificate of service* is a statutory entitlement and the Respondent should issue one to the Claimant within 21 days.

#### **Conclusion and Orders**

23. Save for *Certificate of Service* which should be issued within 21 days, the Court finds no merit in the Cause herein, and orders it dismissed with no order as to costs.

**Delivered, dated and signed in Nairobi on this 20<sup>th</sup> day of September 2019.**

**Radido Stephen**

**Judge**

#### **Appearances**

For Claimant Mr. Ochako instructed by J. Okerosi Ochako & Co. Advocates

For Respondent Mr. Weru instructed by Obura Mbeche & Co. Advocates

Court Assistant Lindsey