



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 905 OF 2014

DENIS OMONDI.....CLAIMANT

VERSUS

EUROCRAFT AGENCIES.....RESPONDENT

J U D G E M E N T

1. The Claimant pleaded that he initially worked for the respondent as an intern Customer Service Agent from 1st March,2010 to June 2010 and was thereafter absorbed as a full employee in the same position. According to the Claimant, he served the respondent dutifully and diligently and did not during the period worked receive any warning or suspension.

2. The Claimant continued to work in the same position without leave, holiday or overtime dues until 31st December,2013 when he was called by the station manager one Erastus and was informed that he had been promoted as team leader, customer service and that the appointment would take effect immediately. When the Claimant refused the promotion due to apprehension that he had not been trained, the station manager informed him to await the General Manager comments.

3. The General Manager informed the Claimant that he (the general manager) was in charge of interviews and was not aware of any vacancy of team leader.

4. The General Manager further observed that the post of the team leader was very delicate and he had to be involved in the recruitment.

5. The Claimant further pleaded that during the meeting the General Manager went on to call the HR Manager to inquire about the Claimant's alleged appointment as a team leader without proper procedure being followed. The station manager replied that he was doing so on his own authority. According to the Claimant the General Manager promised to resolve the issue and follow the right procedure. The Claimant thought the issue was resolved until he was served with a dismissal letter on 2nd January,2013.

6. The Claimant complained the dismissal was done without any or reasonable grounds or just cause and further that he was terminated without notice or payment in lieu of notice.

7. The respondent on its part pleaded that at all times material it observed all provisions of the labour laws and it was the Claimant who demonstrated arrogance and defiance to authority by disobeying lawful orders issued by his supervisors, earning him dismissal. Further that on 1st January, 2014 the Claimant working in cohorts with one Nancy Njogu and Francis Chacha openly defied and refused to take up duties as assigned by the station manager. The Claimant having disobeyed lawful instructions, was guilty of insubordination and stern disciplinary action had to be taken as per the companies' terms and conditions of service.

8. The respondent denied owing the Claimant any money as Claimant specifically any money on account of days worked in December, salary in lieu of notice, holiday work allowances and leave days.

9. In his oral evidence in Court the Claimant additionally stated that his immediate boss was Erastus and that he instructed him to do some duties. This was in December ,2013. He told Erastus he was not properly trained to handle promotions.

10. He however did not write any letter to complain about the new assignments. He further stated he was aware he could be allocated any other duties. It was further his evidence that he did not have any document to show he worked during holidays. There was a duty roster to be signed by all staff.

11. By consent of the parties the statement of one Eric Tanui was admitted as evidence without calling him. In the brief statement he stated that the Claimant was moved to shift B on 2nd December,2013 on acting capacity of a team leader under approval of the station manager. He worked on the shift until 30th December,2013 and it was from this position that he refused to carry lawful orders assigned to him by the officer in charge. He was asked to see the station manager who dismissed him from work.

12. Refusal to obey a lawful order by a person in authority over the employee is a valid ground for summary dismissal.

13. The Claimant is alleged to have refused to obey an order directing him to take charge as a team leader. The Claimant justified his refusal to take up the position on the ground that he had not been trained. According to him, team leader position was a sensitive one and required training. It is curious to note that apart from the Claimant two other staff, according to the station manager, namely Nancy Njogu and Francis Chacha declined to take up the position when the Claimant declined to do so.

14. According to the station manager Mr. Erastus Gichana, the Claimant and his colleagues had their pass confiscated and sent away after refusing to take up the assigned duties.

15. The Employment Act sets up minimum procedure which must be adopted before an employee's service can be terminated. There must first of all be a reason for termination and second an employee must be accorded an opportunity to show cause why they should be dismissed. It may be true that the Claimant may have disobeyed a lawful order from his superior however from the evidence on record the Claimant appeared to have had a reason for refusing to do. It was therefore necessary for the respondent to subject the Claimant to disciplinary hearing of sorts to listen to why he declined to take duties he was assigned.

16. The respondent however confiscated his pass and sent him away pending disciplinary action. This is contrary to the requirements of the Employment Act hence the Court finds the termination unfair.

17. The Court therefore awards the Claimant as follows: -

(a) One month's salary in lieu of notice 12,600

(b) Five months' salary for unfair dismissal 63,000

(c) Costs of the suit.

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

19. The Claimant shall further have costs.

20. It is so ordered.

Dated at Nairobi this 18th day of October, 2019

Abuodha Jorum Nelson

Judge

Delivered this 18th day of October, 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge