



REPUBLIC OF KENYA

IN THE COURT OF KENYA AT ELDORET

EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET

CAUSE NO 319 OF 2017

DAVID OMONDI AMBUSOCLAIMANT

VERSUS

CHEBUT TEA FACTORY LIMITED.....RESPONDENT

J U D G E M E N T

1. The Claimant pleaded that he was employed by the Claimant as a Factory Electrician from August, 1997 to August,2015 when the respondent unlawfully terminated his service and refused to pay him his dues.
2. According to the Claimant, the respondent never notified his union before dismissing him, no leave pay was given and no two month's salary in lieu of notice was paid. The Claimant further averred that during his employment he was grossly underpaid.
3. The respondent on the other hand pleaded that the Claimant was not employed as an electrician but was working as a Fundimate. The respondent further pleaded that it was not in dispute that the Claimant was employed on 1st February,2011. Prior to that the Claimant was a student attachee in 1997 while a student at Siaya Institute of Technology where he was for the period between 1st August, 1996 to 31st December, 1996. As at 1997 the Claimant was still a student just having cleared his practical attachment hence the claim of being respondent's employee is a wild claim.
4. The respondent further pleaded that the Claimant was never at any point terminated from employment but voluntarily resigned through a letter dated 30th July,2015.
5. Concerning leave, the respondent stated that the Claimant had not only exhausted all his leave days in advance. On the issue of underpayment, the respondent stated that the Claimant was never underpaid and that the Claimant was paid as per existing labour regulations.
6. At the hearing the Claimant further stated that he initially joined the respondent as an attachee in 1994 and was employed in 1197. He stated working as an artisan (fundi mate) as permanent employee. He worked until 2012 when he was given the position of Acting Grade II. He worked until August,2015 when he resigned. According to him, he resigned as the best option because he felt pushed out. He felt not being appreciated at work. His salary was delayed most of the time. When he resigned, he cleared with the respondent but the accountant delayed in signing the clearance form. He therefore not paid his dues when he resigned.
7. In cross-examination he stated that he first contacted the respondent in 1996 as a student attachee. This ended in January,1997. He was then employed in August of that year. According to him, he was not issued with appointment letter immediately. The appointment letter was issued in 2011. The employment was to take effect from 2011. It was his evidence that he had nothing to show that he stated working in 1997.
8. The respondent's witness, Mr. Thomas Nyagitare informed the Court that he was the Manager Tombe Tea Factory. He used to work for the respondent and that the Claimant worked until 2015 when he resigned. According to him he advised the Claimant on matters outside the workplace and counselled him about resignation but he said he had reached a level where he wanted to leave.
9. The Claimant told him he had got a job with Kenya Power. He denied there was a problem with payment of salaries and did not remember any employee complaining about delayed salaries.
10. Concerning leave, it was his evidence that the Claimant took all his leave days. In cross-examination he stated that the Claimant never worked prior to 2011. He further stated that the Claimant never qualified to be paid gratuity as per the CBA. He further stated that he involved the Claimant's union on the issue of resignation. He called the shop steward to discuss the resignation.

11. In a claim for unfair termination of service, the burden is cast on the employee to show that unfair termination took place. The Claimant herein resigned from employment because he claims he was not appreciated and that there were salary delays.

12. In his letter of resignation, the Claimant states that the resignation came about after thorough deliberation and assessment and further that the resignation was in his best interest. The Claimant nowhere complained about salary delays or failure to be appreciated. The Claimant being a member of the relevant union did not produce even a simple letter of complaint to his union over his grievances at the workplace for the union to take up the issue on his behalf. The Court to that extent finds that the Claimant has failed to discharge the burden cast upon him by law to show that there was unfair termination of his service. The Claimant for his own reasons not adequately disclosed, resigned from employment.

13. Concerning his termination dues, the Claimant conceded that he left his clearance form with the respondent's accountant and had never gone back to collect his terminal dues. The respondent cannot therefore be faulted for not paying the Claimant his terminal dues upon resignation when he had not finalized the clearing process.

14. Concerning the claims for gratuity, accrued leave, and underpayment, the respondent adequately demonstrated that as per the CBA only employee who had worked for 5 years or more were entitled to gratuity. The Claimant had only worked for 4 years.

15. Regarding claim for leave and period for gratuity, the Claimant did not show anything he relied on to claim he was in respondent's employment prior to January 2011 when he was issued with a letter of appointment. The letter of appointment dated 19th January, 2011 was part of Claimant's own documents. He never attached any earlier contract to show his engagement with the respondent prior to 2011.

16. Concerning leave the respondent produced the Claimants' leave record which showed he went on leave during the period he worked.

17. In conclusion the Court finds the claim mistaken and unmerited. The same will be dismissed with no order as to costs. The respondent will however, pay the Claimant his terminal dues as per the CBA in force when he resigned and as indicated in their letter 3rd August, 2015 acknowledging the Claimant's resignation.

18. It is so ordered.

Dated at Eldoret this day of 2019

Abuodha Jorum Nelson

Judge

Delivered this 28th day of November 2019

Abuodha Jorum Nelson

Judge

In the presence of: -

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge