



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

EMPLOYMENT AND LABOUR COURT AT NAIROBI

CAUSE NO 523 OF 2015

GEOFREY NYABUT ONGUKO.....CLAIMANT

VERSUS

ADIX PLASTIC LIMITED.....RESPONDENT

J U D G E M E N T

1. The Claimant pleaded that he was employed by the respondent in January 2013 as a general worker and worked until 28th February, 2015 when the respondent terminated his service.
2. According to him on 28th February, 2015 he reported on duty as usual and when he was about to log in to work, he was instructed by the Human Resource Manager Mr. Maduya to leave the queue. The Human Resource Manager demanded that he signs a warning letter stating he left work early the previous day or else his services would be terminated. He told the Human Resource Manager that he left work at 6.30 pm as everyone else he therefore refused to sign the warning letter. He was consequently terminated from service of the respondent.
3. The respondent on the other hand pleaded that the Claimant failed to conduct himself within the precincts of his contract. The respondent further stated that the Claimant conduct was characterized by insubordination and reckless disregard of duties.
4. According to the respondent, the Claimant absconded from duty without just cause thus violating the express provisions of his contract of employment. In the circumstances the Claimant was never dismissed. The claimant was issued with a letter to show why he should not be dismissed for absconding duty but failed to honour the notice to show cause.
5. At the hearing the Claimant stated that he used to do witness design. On the material day he was issued with a letter claiming he had absconded duty. He did not sign for the letter. He further stated that he had earlier been issued with a warning letter for pointing a finger at his boss. There was also neither letter accusing him of switching off the machine.
6. Concerning working hours, he stated that he used to report at 8.00 am and leave at 5pm and that he was paid for the month he worked but was not given service pay and notice money. It was his evidence that he apologized to save his job.
7. In cross-examination he stated that he never acted contrary to the Company's terms and conditions of service. He further stated that he was required to seek permission before leaving his work place during working hours. According to him, he sought permission from Mr. Mwakio. He further stated that he did not respond to the show cause letter. He went to the respondent's premises severally but was refused entry by security. He also stated that the respondent used to deduct contribution for NSSF from his salary.
8. The respondent's witness Ms Anne Maragia informed the Court that she worked for the respondent as Human Resources Manager. According to her, the Claimant was working for the respondent as a general worker. He never found the Claimant when she joined the respondent but from the records, she could say he was a problematic person. The Claimant apologized for his misconduct on two occasions. He received warning letters.
9. She further stated Mwakio was an employee like the Claimant. He was not his supervisor. One is supposed to seek permission from his line Manager. The Claimant was issued with a Show Cause letter but refused to sign for it. The Claimant was however not issued with a termination letter. He never came back after being issued with a Show Cause letter.
10. In cross-examination she stated that she had no report from HR showing the Claimant refused to receive the Show Cause letter. Under Section 47(5) of the Employment Act, in a claim for unfair termination the burden of proof that an unfair termination has taken place rests on the employee while the justification for reasons for termination rests on the employer.

11. The Claimant alleged that he was unfairly terminated when he refused to sign for a warning letter for leaving work earlier than she rest. According to him he left work at 6.30 pm as everyone else. The Claimant in his evidence however conceded that he was absent from work he however, sought permission from a Mwakio. The respondent's witness Ms Anne Maragia stated that Mr. Mwakio was a fellow employee like the Claimant and could not grant him permission to be away from work. Permission are given by supervisors.

12. Further in his evidence in Court, the Claimant conceded to receiving several warning letters and apologizing for absents himself from work. The Claimant further said he did not respond to the Show Cause letter. The respondent attached the warning letters and the Claimant's apologizing. Whereas the Claimant in his evidence stated that he apologized to save his job, he never filed a response to these warning letters and apologies attached to respondent's memorandum of response.

13. To this extent, it is the Court's view that the Claimant failed to discharge the burden cast upon him by law that the respondent unfairly terminated his service. The claim is therefore found without merit and is hereby dismissed with costs.

14. It is so ordered.

Dated at Nairobi this 22nd day of November, 2019

Abuodha Jorum Nelson

Judge

Delivered this 22nd day of November, 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

.....**for the Claimant and**

.....**for the Respondent.**

Abuodha J. N.

Judge