



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET

CAUSE NO 117 OF 2017

KIGEN FESTUS KIPRONO.....CLAIMANT

VERSUS

LESSOS VETERINARY SUPPLIES LTD.....RESPONDENT

J U D G E M E N T

1. The Claimant pleaded that at all material times he was employed by the respondent and posted to work at the respondent's Cicada Hotel at Eldoret Town as Manager from 1st July,2016. As at the time of termination of the Claimant's employment he was earning gross salary of Kshs. 60,000/= per month.
2. According to the Claimant he served the respondent dedicatedly without any warning until the date of his termination from service on 18th Marh,2017.
3. Prior to the termination date, the Claimant fell sick on 17th March, 2017 at around 5.00 p.m and sort oral permission from the director to go to hospital which was duly granted. On 18th March,2017 the Claimant reported to work albeit with difficulty for purposes of seeking extension of his stay at home as he was still recuperating. It was then when he found a new manager had taken his place. He was however granted permission to stay home until fully recovered.
4. On 20th March,2017 the Claimant wrote an e-mail to the director Dr. Mwangi informing him that he was still unwell and could not make it to work. The director however responded on the same day informing the Claimant that his service had been terminated and was advised to pick his letter of dismissal from a Mr. Mwaniki.
5. According to the Claimant, the decision to terminate him without any reason was malicious, ill willed and unfair.
6. The respondent on its part denied that the termination was unlawful as alluded by the Claimant. The same was occasioned by acts of misconduct including desertion, dereliction of duty, insubordination, excessive drinking during working hours, use of vulgar language in total disregard to customers and constraint wrangles with previous employees.
7. The respondent averred that summary dismissal was therefore the only available remedy to save the Claimant's image therefore was lawful. Regarding sickness, the respondent pleaded that the Claimant feigned sickness after desertion and gross misconduct to escape disciplinary action. Further, the respondent averred that the Claimant was accorded right to be heard in respect of events of the night of 16th March,2017 and he duly attended a meeting convened by one of the directors which was also attended by his supervisor and one of the employees. The meeting was on 17th March,2017.
8. According to the respondent, the Claimant wrote an email purporting to be sick, however, the respondent's director was categorical and he duly informed the Claimant to go and collect his termination letter but he never did so.
9. At the hearing the Claimant adopted his pre-recorded witness statement as evidence in Chief. He additionally stated that he used to report to work from 6.30 am and work till 10.00 pm. Further that he was not paid his salary for February,2017. He also stated that he never went on leave for the period he worked. He denied going through any disciplinary hearing before dismissal.
10. In cross-examination he stated that he was employed for about eight months as a manager.
11. On 16th March,2017 there were guests at the hotel for a conference. Participants would request for tea, lunch and dinner. It was further his evidence that there was altercation between himself and a staff member. On the material day he asked the Chief to set up the buffet in

good time. He left the hotel and reported to work the next morning and discussed with the director the previous days incident. It was his evidence that he did not know if the director called other people about the same incident but it was the same day he asked for a sick-off.

12. According to him he discussed with the director alone and that the mode of communication was either verbal or via email. The sick-off commination was initially verbal and it was on 10th March, when he wrote an email. He however stated that he never provided any documentation about his sickness.

13. Regarding discounts, it was his evidence that staff were never allowed to give discounts unless authorized by the Manager or a director and that shortfalls no float were considered a misconduct and would be deducted from salary.

14. Concerning Judy, he said she was a waitress and had approached him to help register a company. She gave him the necessary money however the business was never registered. Judy reported the issue to the management and the matter was later resolved between Judy and himself.

15. The respondent's 1st witness Dr. Mwangi Mwaniki stated that on 17th March,2017 he reported to work around 8.30 am. At around 9.00 am the Claimant came and informed him, he had been insulted by the Hotel Chef and he insulted him back in self defence.

16. According to the Chef the Claimant came around 9.00 pm seemingly drunk and started harassing everybody. According to him there was shortage of food due to overbooking and that he asked the supervisor to prepare a report. He then called the directors to discuss the matter and invited the Claimant to a meeting. The hearing took place and it was found that it was the Claimant who insulted the Chef.

17. According to him the Claimant attended the meeting but when he realized the issue was to be discussed he left the meeting venue. The directors deliberated on the issue and decided to dismiss the Claimant. He was found guilty of insubordination and desertion.

18. It was Mr. Mwaniki's evidence that the Claimant never collected his termination letter and that his terminal dues could not be paid unless he cleared. He denied giving the Claimant a sick off in the morning and that he asked for a sick off at around 5.00 p.m. The Claimant sent an e mail at around 6.00 pm and in the e mail he never mentioned about sickness.

19. In cross-examination he stated that they from a disciplinary panel whenever there was an issue. The panel mostly comprised directors. He stated that the Claimant was not given notice to show cause because he deserted work. As a manager the Claimant had power to give instructions to employees. The Claimant worked until 17th March, 2017 and his dues were there.

20. In re-examination he stated that he informed the Claimant that a disciplinary panel had been formed on the incident against him and that the Claimant never complained about the short notice.

21. The respondent's second witness Mr. Nchoe informed the Court that on 16th March,2017 he was at work and that he noticed the Claimant was smelling alcohol. The Claimant did not insult him but his colleague. He received a letter to attend disciplinary hearing and the Claimant was also called to discuss the issue as he came.

22. The Claimant in his memorandum of claim alleged that the respondent unfairly, maliciously and without reasonable cause, terminated his services. According to him the respondent terminated his service because he asked for permission to be away due to illness. He stated that he fell sick on 17th March, 2017 at around 5.00 pm and sort oral permission from the director to go to hospital which permission was granted. On 18th he reported to work but with difficulty to seek extension of his stay at home as he was still recuperating. This is when he found a new manager had been installed in his place. He was however granted permission to continue to stay home until when fully recovered.

23. On 20th March, 2017 the Claimant wrote an e-mail to the director Mr. Mwangi informing him that he was still unwell and would not make it to work but the director responded and told him his services had been terminated and he should come and pick his termination letter.

24. According to the Claimant therefore, his services were terminated on account of being absent due to illness. Whereas the Claimant did not disclose what he was ailing from that prevented him from working, he never produced any hospital attendance card or sick-sheets to show he sought any medical attention to vouch for his allegation that he was away from work due to illness.

25. The Claimant never at all pleaded the fact that around the same period he had been involved in an altercation with a fellow member of staff, the Hotel Chef who he claimed he insulted back in self-defense. This issue and others regarding allegations on Claimant's conduct and relationship with fellow members of staff only emerged during the trial and in cross-examination. Further his witness statement filed in support of the claim made no mention of these issues.

26. To this extent the Court finds the Claimant guilty of non-disclosure of the real reason why the respondent terminated his service. His conduct lends more credence to allegations by the respondent against him that he feigned sickness and disappeared from the venue of the disciplinary hearing meeting when he realized he was to be called upon to give his account of what transpired on 16th March,2017 in the evening.

27. The Court therefore reaches the conclusion that the respondent was justified in terminating the Claimant's service and his claim is filed as without merit and is hereby dismissed with costs.

28. The respondent shall however pay the Claimant his terminal dues as indicated in the termination letter upon the Claimant clearing with the respondent.

29. The respondent shall further issue the Claimant with a certificate of service.

30. It is so ordered.

Dated at Eldoret this 14th day of November, 2019

Abuodha Jorum Nelson

Judge

Delivered this 14th day of November, 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge