



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 304 OF 2017

KENNEDY NYANDIRI NYANGATE.....CLAIMANT

-VERSUS-

H. YOUNG & COMPANY LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 1st November, 2019)

JUDGMENT

The memorandum of claim was filed on 14.02.2017 through Samuel Nyambane & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) A declaration the sacking of the claimant is illegal or unlawful and for payment of Kshs. 850, 317.60 being:
 - i. Certificate of service.
 - ii. One month salary in lieu of notice Kshs.45, 851.00.
 - iii. Severance pay for each year served Kshs.39, 544.80.
 - iv. Leave for years worked Kshs.39, 544.80.
 - v. Remaining contractual days Kshs.214, 225.00.
 - vi. General damages for wrongful dismissal Kshs.514, 212.00.
 - vii. Bonus allowance to be claimed.
- b) General damages for wrongful dismissal as the Court shall assess.
- c) Costs of the suit and interest.
- d) Any other relief the Honourable Court may deem fit and just to grant.

The claimant's case is that he was employed by the respondent from 20.01.2015 to 31.08.2016 when the claimant alleges that he was sacked unlawfully without a reasonable cause.

The respondent appeared on 27.02.2017 through Adede & Company Advocates and filed a statement of response on 17.03.2017. The respondent prayed that the claim be dismissed with costs. The respondent admitted that it employed the claimant and further that after the hearing flowing from the notice to show-cause dated 30.08.2016 the claimant was summarily dismissed and was entitled to payment of untaken leave and salary up to 30.08.2019.

The claimant testified that he worked for the respondent for 9 years. He was last deployed on the Webuye- Malaba Road Construction Project. He was summoned to the office by the respondent's Human Resource Officer. He was given the letter for summary dismissal on account of threatening a security officer. His evidence was that the previous day he had been asked about the issue. He denied the alleged threats against the security officer.

The respondent failed to call a witness to prove the reason for termination as provided for in sections 43 and 47(5) of the Employment Act, 2007. However, the statements filed by the claimant show that the security officer one Boaz O. Amolloh reported an incident of 25.08.2016 at around 07.45 hrs when the claimant threatened him and one Mr. Koskey advised the said Boaz to take care in view of the death threats. The statement by Mr. Koskey also filed by the claimant confirms the same incident. The Court returns that the claimant by his own evidence has confirmed that the allegations as levelled took place. The claimant confirmed the issue was discussed a day prior to the dismissal. The Court returns he was accorded due process per section 45 of the Act and the reasons for termination were valid. The termination was not unfair.

The claimant has exhibited the relevant certificate of service and the prayer in that regard was misconceived.

The respondent failed to attend at the hearing and there will be no orders on costs.

In conclusion judgment is hereby entered for the respondent against the claimant for dismissal of the suit with no orders on costs.

Signed, dated and delivered in court at **Nairobi** this **Friday, 1st November, 2019**.

BYRAM ONGAYA

JUDGE