



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1903 OF 2014

(Before Hon. Lady Justice Maureen Onyango)

TRANSPORT WORKERS' UNION.....CLAIMANT

-Versus-

RUIRU FEEDS LIMITED.....RESPONDENT

JUDGMENT

The claim herein is filed by Transport Workers' Union on behalf of MOSES RUGE TIBI, the grievant.

According to the memorandum of claim dated and filed on 17th October 2014, the claimant was employed by the respondent, Ruiru Feeds in 2011 as a heavy commercial driver (over 8 tonnes) and worked for over 2 years satisfactorily without any disciplinary incidents until 19th July 2013, when his employment was terminated.

The reason for termination according to the claim is that the grievant was suspected (wrongly) of carrying unauthorised passengers and goods in the respondent's company vehicle.

It alleged that the termination was unfair for failure to comply with Sections 41, 43 and 45 of the Employment Act.

The respondent filed a reply to the memorandum of claim denying any knowledge of the grievant. The respondent avers in the reply to the memorandum of claim, that the grievant is a stranger, that it did not enter into any contract with the grievant and that the claimant has no *locus standi* to represent the grievant. It prays for dismissal of the suit.

The case was heard on 4th April 2017 in the absence of the respondent who failed to attend court on the hearing date following service of hearing notice by the court.

The grievant who testified on his behalf stated that he was employed by the respondent as a driver. He could not remember the date of employment save that it was in 2011. He could also not recall the date of dismissal but stated it was in 2013. He testified that he was terminated on grounds that he was carrying unauthorised goods and was never issued with a warning. He testified that he was paid Kshs.600 a day translating to Kshs.15,600 a month. He further testified that he was not a member of NSSF.

Mr. Nasir Makuwa, who appeared for the claimant union relied on the pleadings and evidence on record.

Determination

I have considered the pleadings and evidence on record. The claimant in his testimony stated he could not recall the date of employment or termination. He did not mention the vehicle he was driving. He did not explain the circumstances under which he was terminated. He only stated that he was terminated for carrying unauthorised goods. He did not even deny that the reason for termination was wrong or that it was not true that he was carrying unauthorised goods.

The respondent having denied any knowledge of the grievant, it was imperative that the claimant or grievant submit some evidence connecting the grievant with the respondent. Unfortunately, there was none.

Section 47 (5) provides that in a claim for unfair termination or wrongful dismissal, it is the burden of the employee to prove that an unfair termination of employment occurred. In the present case, I find that the claimant has not proved that there was unfair termination or

wrongful dismissal of the grievant. It has not even proved that there was an employment relationship between the grievant and the respondent.

In the circumstances, I find that the claimant has not proved its case and dismiss the same.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JANUARY, 2018

MAUREEN ONYANGO

JUDGE