



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 283 OF 2016

CALEB OCHIENG OLOO

CLAIMANT

v

MENENGAI OIL REFINERIES LTD

RESPONDENT

JUDGMENT

1. Caleb Ochieng Oloo (Claimant) was employed by Menengai Oil Refineries Ltd (Respondent) as a general worker in April 2008.
2. On 1 August 2016, the Claimant moved court alleging that the Respondent had unfairly terminated his employment.
3. The Respondent filed a Statement of Defence on 28 October 2016 and on 16 December 2016 the Court directed it to file and serve witness statements and documents to be relied on.
4. On 17 March 2017, the Claimant proposed that the *List of Issues* as filed by the Respondent could be adopted for hearing. The Court agreed to adopt the *List of Issues* and during the same appearance and in the presence of Mr Awuonda for the Respondent, hearing was scheduled for 8 November 2017.
5. On the hearing date, an attempt by the Respondent to secure an adjournment was declined. The reasons for declining to allow the adjournment are on record and include failure to file and serve witness statements (the Court notes the same were only filed on the morning of the hearing).
6. The Respondent therefore did not lead any evidence.
7. The Claimant filed his submissions on 4 December 2017. The Respondent's submissions were not on file by 30 December 2017 as was directed.
8. The Court has considered the material placed before it and condensed the *Issues* for determination as being 2, *whether there was an unfair termination employment and appropriate remedies*.

Whether there was unfair termination of employment.

9. The Claimant admitted that he was issued with a letter terminating his employment on 6 August 2015. The reason given for the termination was *refusal to cooperate in disciplinary proceedings*.
10. However, the Claimant in his testimony denied that he was aware of any disciplinary proceedings and attributed the cause of termination of his employment to legal proceedings he had instituted against the Respondent, anchored on an injury in the workplace. He gave the case number as CMCC No. 1295 of

2014.

10. Section 41 of the Employment Act, 2007 places an obligation on an employer to conduct a hearing before terminating the services of an employee on the grounds of *misconduct, poor performance and or physical incapacity*.

11. The Respondent herein did not place before the Court any evidence that it conducted a hearing as contemplated by section 41 of the Employment Act, 2007.

12. Sections 43 and 45 of the Act also require an employer to prove the reasons for terminating an employee's contract, and further that the reasons are valid unfair.

13. The Respondent did not discharge either of the burdens.

14. The Court can therefore conclude and find that the termination of the Claimant's employment was both procedurally and substantively unfair.

Appropriate remedies

Severance pay

15. The Claimant's case was not one of redundancy and therefore he is not entitled to severance pay.

Damages for unfair termination

16. One of the primary remedies for unfair termination of employment is compensation equivalent not more than 12 months gross wages, rather than damages.

17. The Court having concluded that the termination of the Claimant's contract was unfair, and considering that he served the Respondent for about seven years, would award the equivalent of 8 months gross wages as compensation. At the point of separation the claimant was earning a gross wage of Kshs 11,236/-.

Conclusion and orders

18. The Court finds and holds that the termination of the Claimant's employment was unfair and awards him, and orders the Respondent to pay him

(i) Compensation Kshs 89,888/-.

19. Claimant to have costs.

20. File to be transmitted back to Nakuru after this judgment.

Delivered, dated and signed in Nairobi on this 19 January 2018.

Radido Stephen

Judge

Appearances

For Claimant Mr. Kobe instructed by B.O. Akango & Co. Advocates

For Respondent Ms. Cheruto instructed by Ogejo, Olendo & Co. Advocates

