



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI

CAUSE NUMBER 1238 OF 2014

GEOFFREY NZANGI..... CLAIMANT

VERSUS

ALPHA MEDICAL MANUFACTURES LTD..... RESPONDENT

JUDGEMENT

1 By a memorandum of claim filed on 24th July 2014, the claimant averred that he was employed by the respondent as a production operator with a starting salary of Kshs 16,000 per month. The respondent assigned him different roles such as storekeeper, courier and also machine operator. His salary was subsequently increased in 2011 to Kshs 18,285 owing to his special skills and insight at work.

2 On 13th November, 2013 he claims the respondent wrongfully and unfairly terminated his employment without notice. Further that the respondent neither gave him an opportunity to be heard nor was he properly served with a warning letter, contrary to the stipulations in section 40 of the employment Act, 2007. The claimant further pleaded that the respondent has since failed to pay him his legal terminal dues and severance pay despite several demands.

3 The respondent on its part denied it unlawfully terminated claimant's service. According to the respondent, it had a long standing relationship with the claimant where he had always been offered employment whenever the same was available. The respondent further pleaded that on 29th August, 2013 it discussed with the claimant and explained that the production factory where the claimant was working was being closed down and the production stopped. Pursuant to the said discussion and having agreed on the way forward, the respondent issued the notice dated 18th November, 2013 which took effect on 31st December, 2013. The respondent further pleaded that all dues to the claimant were paid as at the last date of the claimant's employment.

4 In his oral evidence in court, the claimant reiterated most of his averments in the memorandum of claim and stated further that in December, 2013 he was told there was no more work since production was closing. He was issued with a termination letter. According to him, they were never called to the Labour Office and that there was no meeting to discuss closure.

5 In cross-examination he stated that he worked for the respondent earlier and they closed. This was from 1991 to 2007. He was called again in 2008. He admitted that he was given a termination letter informing him his contract would end on 31st December, 2013. He and his colleagues were informed that they would be called again if production opens again. He further stated that he was paid his salary for the period he worked. It was his evidence that he signed for the termination letter on 28th November, 2013.

He further stated that he took his annual leave and that he was paid his dues in cash.

6 The respondent's witness Dr Shashkhan Madiali informed the court the respondent manufactured syringes but switched to medical disposables. According to him the claimant was retired and paid dues. According to Dr Madiali, the closure was because it was found out that production was no economical. The employees were informed of the impending closure. A Labour Officer was called to talk to the staff.

7 This case presents to me as a case of declaration of redundancy. It was not in dispute that the claimant had been previously before experienced work stoppage and recalled. The respondent exhibited in its bundle of documents a one and half months notice issued to the claimant. The respondent also exhibited a letter to the Ministry of Labour informing that office of the intention to close the respondent's production unit.

8 The respondent further exhibited a schedule of payment for terminal dues which included service pay. The claimant acknowledged and signed for the payment of his terminal dues confirming he had no further claims from the respondent.

9 Section 40 of the Employment Act, makes provision for termination on account of redundancy. The section requires among others that an employee notifies the union of such intention where affected employees are unionisable and the area labour office of the reasons and the extent of the intended redundancy not less than a month prior to that date of the intended termination. Where an employee is not a member of a union the notice should be to the employee personally and the labour officer. The employer has to further pay such employee the leave due in cash, the employer must further pay such employee not less than one month's wages in lieu of notice. Such employee is further entitled to severance pay at the rate of not less than fifteen days pay for each completed year of service.

10 The claimant in his letter of acknowledgement of terminal dues attached to the respondent's bundle of document acknowledges that he was paid the above heads of terminal dues. The claimant further in his evidence in court acknowledged receipt of notice to terminate his services on account redundancy. He further acknowledged that he had been previously before declared redundant and called back to work when production resumed.

11 The court in the foregoing circumstance is not persuaded that the respondent unlawfully terminated claimant's services on account of redundancy, hence finds the claim without merit and dismisses the same with costs.

12 It is so ordered.

Dated at Nairobi on this 23rd day of February 2018

Abuodha J. N.

Judge

Delivered at Nairobi on this 23rd day of February 2018

Abuodha J. N.

Judge

In the presence of:-

.....for the Claimant

.....for the Respondent