



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO 1635 OF 2014**

**JOSHUA MBITHI MUNYWOKI.....CLAIMANT**

**VERSUS**

**CROWN INDUSTRIES LIMITED.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. By a Memorandum of Claim dated 9<sup>th</sup> September 2014 and filed in court on 18<sup>th</sup> September 2014, the Claimant has sued the Respondent for unlawful termination of employment and failure to pay terminal benefits. The Respondent filed a Reply on 24<sup>th</sup> October 2014.

2. When the matter came up for hearing, the Claimant testified on his own behalf and the Respondent called its Human Resource Manager, James Mwangi. At the close of the hearing, the Court gave the parties time to file written submissions but by the time of writing this judgment, none had been filed.

**The Claimant’s Case**

3. The Claimant states that he was employed by the Respondent as a Machine Attendant at a monthly salary of Kshs. 9,800 plus a house allowance of Kshs. 1,470 from October 2008.

4. The Claimant avers that his employment was terminated in July 2014, without any justifiable cause and in violation of due procedure. He adds that he was not paid his terminal benefits.

5. The Claimant now claims the following:

- a) Holidays for 6 years.....Kshs.9,408
- b) Travelling allowance for 6 years @Kshs. 9,800.....58,800
- c) Payment in lieu of leave for 6 years @ Kshs. 9,800.....58,800
- d) Compensatory damages.....117,600
- e) Gratuity for 6 years @ 15 days.....117,600
- f) Gratuity for 6 years @ 15 days.....28,400

g) One month's pay in lieu of notice.....9,800

h) Costs plus interest

### **The Respondent's Case**

6. In its Reply dated 23<sup>rd</sup> October 2014 and filed in court on 24<sup>th</sup> October 2014, the Respondent admits having employed the Claimant as pleaded in the Memorandum of Claim, save that the effective date of employment was 1<sup>st</sup> April 2011 and not October 2008.

7. The Respondent states that in the course of his employment, the Claimant constantly and repeatedly violated the dictates of his letter of appointment for which he was warned both verbally and in writing.

8. The Respondent further states that the Claimant was summarily dismissed on 5<sup>th</sup> August 2014, after being found guilty of negligence in the performance of his duties. Upon dismissal, the Claimant was paid all his dues which he received and acknowledged.

9. The Respondent asserts that the Claimant's summary dismissal was lawful and fair, within the requirements of the Employment Act, 2007.

### **Findings and Determination**

10. There are two (2) issues for determination in this case:

a) Whether the Claimant's dismissal was lawful and fair;

b) Whether the Claimant is entitled to the remedies sought.

### **The Dismissal**

11. The Claimant denied receiving any dismissal letter from the Respondent. The Respondent however produced letter dated 5<sup>th</sup> August 2014 stating as follows:

*"Dear Sir,*

#### **SUB: SUMMARY DISMISSAL**

*This has reference to your response to our show cause notice dated 28<sup>th</sup> July 2014, whose contents were noted.*

*However, we regret to inform you that of late excess packing of our goods has become prevalent in which we suspect a criminal matter or negligence involving our employees removing goods from our stores in cahoots with our delivery crew.*

*In view of this therefore and considering the fact that you have two*

*(2) previous valid warnings, we are left without any option but to have your services summarily dismissed (sic) on grounds of gross misconduct for willful neglect, careless and improper performance of your work on 19<sup>th</sup> July 2014.*

*This is in accordance with the relevant provisions of the employment act 2007.*

*You should collect your final dues (i.e. leave due and days worked) from cash office any day during working hours.*

*Thank you.*

*For Crown Industries Ltd.*

*(Signed)*

*Head of HR.”*

12. This letter, which the Claimant denies having received, makes reference to a response by the Claimant to a show cause notice issued by the Respondent. Neither the show cause notice nor the Claimant's response were availed to the Court. Similarly, the 2<sup>nd</sup> and final warning letter dated 31<sup>st</sup> March 2014 makes reference to a show cause notice and a response which were not produced in Court.

13. These evidential gaps were not coincidental and the logical conclusion is that these letters were made by the Respondent for purposes of this case. The Claimant further denied receiving an earlier warning letter dated 14<sup>th</sup> January 2013 and in light of the foregoing, the Court believed him.

14. Even assuming that the dismissal letter had been served on the Claimant, there was no evidence of any specific charges made against him. Rather, the Respondent appeared to be addressing a general problem of excess packing.

15. In the circumstances, the Court finds that the Respondent failed to establish a valid reason for terminating the Claimant's employment as required under Section 43 of the Employment Act, 2007. Additionally, the Respondent failed to adhere to the mandatory procedural fairness requirements set out in Section 41 of the Act.

## **Remedies**

16. Before pronouncing the final award in this case, I need to dispense with the auxiliary issue of the effective date of the Claimant's employment with the Respondent. In his Memorandum of Claim dated 9<sup>th</sup> September 2014 and filed in court on 18<sup>th</sup> September 2014, the Claimant gives October 2008 as the effective date of his employment. However, in his testimony before the Court, he gave August 2009 as the effective date.

17. In light of the equivocating nature of the Claimant's evidence on this issue, the Court adopts the Respondents' evidence with regard to the effective and termination dates of the Claimant's employment.

18. Having settled this issue, I now award the Claimant six (6) months' salary in compensation. In making this award, I have taken into account the Claimant's length of service as well as the Respondent's conduct prior to the dismissal. I further award the Claimant one (1) month's salary in lieu of notice.

19. From the evidence on record, the Claimant was paid his pending leave up to the date of dismissal. This claim is therefore without basis and is dismissed. Similarly, the Court found no basis for the claim for gratuity which also fails and is dismissed. The claims for holidays and travelling allowance were not proved and are dismissed.

20. Ultimately, I enter judgment in favour of the Claimant as follows:

a) 6 months' salary in compensation.....Kshs. 67,620

b) 1 month's salary in lieu of notice.....11,270

**Total.....78,890**

21. This amount will attract interest at court rates from the date of delivery of this judgment until payment

in full.

22. The Claimant is also entitled to a certificate of service and the costs of the case.

23. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 9<sup>TH</sup> DAY OF JANUARY 2018**

**LINNET NDOLO**

**JUDGE**

**DELIVERED IN OPEN COURT AT NAIROBI THIS 16<sup>TH</sup> DAY OF FEBRUARY, 2018**

**MAUREEN ONYANGO**

**JUDGE**

Appearance:

Mr. Ndegwa for the Claimant

Miss Okoth for the Respondent