



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NUMBER 1311 OF 2016

ABDALLAH SWALEHE.....CLAIMANT

VERSUS

PATCO INDUSTRIES LTD.....RESPONDENT

JUDGEMENT

1. The claimant averred that he was employed by the respondent on 1st September, 2014 as a cleaning supervisor at a salary of Kshs 18,000 inclusive of house allowance. He claimed that he worked for the respondent with due diligence until 12th February, 2016 when the respondent terminated his services.
2. According to the termination letter, the termination was on grounds that he did not supervise the cleaning of part of the bubble gum section which was very dirty and untidy. According to him, the allegations were not true as he had properly performed his duties. Upon termination he was only paid Kshs 7,707 for the days worked in March, 2016.
3. The respondent on its part admitted the claimant was its employee as alleged but averred that on 9th February, 2016 the claimant was requested by head of production department to supervise the cleaning of part of the bubble gum section as it was very dirty. The claimant however failed to do so. On the same day, the claimant left his workplace without cleaning crates outside the factory, which are usually supposed to be cleaned and returned inside the factory. These actions were found to be against the claimant's duties as the cleaning supervisor and he was requested to show cause why disciplinary action could not be taken against him.
4. On 10th February, 2016 the claimant responded to the show cause letter stating that there was no detergent to clean the area hence it was left dirty. Regarding the crates, the claimant stated that they were left outside since there was no detergent to clean them. On 11th February, 2016 the claimant was called to the factory for a disciplinary hearing. However, the claimant did not offer any explanation but stated that he should be paid his terminal dues.
5. The claimant further declined to sign the minutes and refused to talk to the respondent team. The claimant was therefore issued with a termination letter. He was given one months' notice and informed his last day would be 12th March, 2016. In his oral evidence he stated that he recorded the witness statement which he sought to be adopted. He further stated that he used to report to work at 8.00 a.m. and leave and 4:30 p.m. and that he worked from Monday to Saturday. It was his evidence that he never went on leave during the period worked and that the leave application for at page 6 of the respondent's bundle of documents was not his and the signature too was not his.

6. It was further his evidence that he was told to move some products which had stayed for over a year but there was no soap to clean the place. According to him, his supervisor told him to cover the place and wash with warm water. He stated that he received a show cause letter but there was no disciplinary meeting.
7. In cross-examination he stated that he sought to be paid in lieu of notice. He however admitted that he was issued with one months' notice and worked for the notice period.
8. The respondent's witness Mr Rogers Birai informed the court that the claimant was a cleaning supervisor and that his work was to ensure the company's premises was clean. On the material day, the claimant was assigned to clean a designated area but did not do so. He also left crates outside the designated area.
9. It was further his evidence that the claimant was issued with a show cause letter and responded. He was called for a disciplinary hearing and the minutes recorded but the claimant refused to sign them. According to him, the claimant went on leave and that the leave forms were signed by the claimant. He further stated that the claimant was registered with NSSF. In cross-examination Mr Birai stated that the claimant took 9 days leave and that the leave forms were in Court. According to him, the claimant was entitled to 21 days of leave.
10. Under Section 47(5) of the Employment Act for any complaint of unfair termination of employment or wrongful dismissal, the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for termination of employment or wrongful dismissal shall rest on the employer.
11. The claimant herein contested the reasons for his dismissal claiming they were unfair. He does not deny that he was called upon to clean the relevant area of the respondent's premises. He further does not deny that he left the crates outside. His explanation was that he could not properly carry out this job because there was no detergent. The claimant however did not demonstrate or lead any evidence that he made a request for detergent and was never given.
12. He was called upon to show cause why disciplinary action should not be taken against him and he responded stating that the reason he did not perform the work assigned properly was because there was no detergent. The respondent did not find the explanation by the claimant satisfactory and gave the claimant one months' notice of termination of employment. The claimant did not object to the notice and served until the end of the notice period and was paid for the days worked.
13. Termination of employment must be for a valid and justifiable reason the onus of proof of which is on the employer. The standard of proof is on a balance of probabilities. Further section 43(2) of the Employment Act provides that reason or reasons for termination of a contract are matters that the employer at the time of the termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee. That is to say the test usually is whether a reasonable employer would for reasons complained about dismiss or terminate the contract. If the answer is to the affirmative, the court would not interfere.
14. The respondent placed premium on the cleanliness of its premises. The claimant was assigned the responsibility of ensuring this. He was called upon to clean the specified area of the respondent's premises and concedes not doing so because there was no detergent. He however did not produce any evidence or even allege that he requested for detergent and was not provided with any. Besides, he did not dispute the one month's notice given to him. He served the entire period of the notice and challenged the termination thereafter.
15. The court in the circumstances is persuaded that their existed valid reasons for terminating the claimant's services and that proper procedure was followed in doing so.
16. The claim is therefore found without merit and is hereby dismissed with costs.

17. It is so ordered.

Dated at Nairobi this 9th day of February, 2018

Abuodha J. N.

Judge

Delivered this 9th day of February, 2018

In the presence of:-

.....for the Claimant

..... for the Respondent

Abuodha J. N.

Judge