



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

CAUSE NUMBER 553 OF 2013

DANSON NYAGA.....CLAIMANT

VERSUS

MASTERMIND TOBACCO LTD.....RESPONDENT

JUDGEMENT

1. The claimant averred that from early March 2000 he was employed by the respondent as a welder at a daily wage of Kshs 446 per day. On 4th February, 2013 he was dismissed from employment by the respondent's Manager Mr Kupal on allegations that he had refused to withdraw a civil case he had filed pursuant to injuries that he suffered while working for the respondent.
2. He pleaded that he had been offered Kshs 55,000/= to withdraw the civil case however, he advised the respondent to negotiate with his advocate but the respondent refused and dismissed him instead. The claimant further averred that he was not offered a hearing or explanation and that there were no valid reasons to dismiss him.
3. The respondent on its part pleaded that the claimant was not contracted as a casual worker and that it couldn't dismiss a person it never employed.
4. In his oral evidence in court, the claimant testified that he used to report to work at 7:30 a.m. and leave at 5.00 p.m. and that they used to sign in while coming in and out while leaving. It was further his evidence that his wages were paid weekly in cash.
5. The claimant further stated that he fell down while at work and got injured in the leg in 2011. It was further his evidence that Mr Kupal told him in presence of a Mr Kimani his supervisor that if he did not accept the Kshs 55,000/= for his injuries, then he should not come to work.
6. In cross-examination the claimant stated he was never issued with an appointment letter and that he never entered into a contract with NGM. In re-examination he stated he was given an appointment letter but the same was kept by the employer.
7. The respondent's witness Mr Duncan Karani informed the court that he was the respondent's Senior Administration Assistant. According to him the claimant was never employed by the respondent and that the respondent was wrongly sued. In cross-examination he stated that he had no record in court to show the claimant was never employed by the respondent. He denied knowledge of a Mr Daniel Simiyu but admitted that he knew NGM Company Ltd as a sister company to the respondent. He further denied knowledge of Mr Kupal.
8. Under section 47(5) of the employment Act, the burden of proving that an unfair termination or wrongful dismissal has taken place rests with the employee while the burden of justifying the grounds for termination or wrongful dismissal shall rest on the employer. Further, the burden of proof of this claim is on the claimant for the court to enter judgement in his favour, the claimant must on a balance of probabilities demonstrate that the allegations he is making more probably occurred than not.
9. The claimant averred he was employed by the respondent which claim the respondent denied. At one point, the claimant alleged he was not issued with an employment letter while at another he alleges such was issued but kept by the respondent. The claimant mentioned the name of one Daniel Simiyu but did not call him or any other former colleague at least to vouch for the allegation that he was indeed employed by the respondent.
10. The respondent's witness on the other hand admitted that he knew about NGM Company Limited as a sister company of the respondent but denied knowledge of Mr Kupal.
11. What the court can deduce from the above is that there is a possibility that the claimant was employed by NGM and not the respondent.

The claimant therefore has not reasonably proved that he was employed by the respondent hence it would be unsafe to burden the respondent with the claims the claimant is making.

12. The claim is therefore found unmerited and is hereby dismissed with costs.

13. 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