



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NUMBER 2154 OF 2012

NANCY ADISA ADAGI.....CLAIMANT

VERSUS

CROWN CLOTHING (K) LTD.....RESPONDENT

JUDGEMENT

1. By a memorandum of claim filed on 24th October 2012, the claimant averred she was employed on 15th September 2003 as a machinist and worked until 29th June 2012 when she alleged her contract was unlawfully terminated without just cause. Her salary at the time of termination was Kshs 9,000/=.

2. The claimant averred that the alleged stolen things cited in the termination letter of 29th June 2001 had been fabricated and backdated by the respondent to create a wrong and false impression that there was cause for termination of her services. According to her, the alleged stolen items were actually found with her colleague namely Nathan. According to the claimant, due process as required by law was not followed before termination of her services.

3. The respondent on its part averred that on 29th June 2012, the claimant picked up company goods, bagged them and handed them over to the factory cleaner named Nathan to be placed at the staff locker room. The Factory Manager saw the cleaner and upon being questioned stated that the bag belonged to the claimant. The Factory Manager invited the claimant for a meeting which was held in the presence of the shop steward Joseph Omwenga, Assistant Shop Steward Patrick Muli, Plant Engineer Zacharia Vidambu and Factory cleaner Nathan Kabira. According to the respondent, the claimant admitted that she committed the offence but refused to sign. However, union representative together with the cleaner present signed.

4. In her oral evidence in court, claimant stated that at the time of termination her monthly salary was Kshs.8,660/=. It was further her evidence that on 29th June 2012, she was called to the office and told Nathan had some items which he said were hers. She was told to go away and later she received a dismissal letter. She denied being privy to letter attached as appendix 2 in the respondent's bundle of documents. She did not sign the said letter admitting Nathan and her took the alleged items. She further denied being issued with a dismissal letter.

5. In cross-examination, she stated that on 29th June 2012 she was called to the office by Mr. Okoth. She found Okoth with Nathan and was told by both that the pieces of cloth were hers. The stop steward was called to the office as well. The claimant further stated that the union discussed the issue with her employer and that she was present at the said meeting where it was agreed that she be paid her dues since she was dismissed without good reason.

6. The respondent's 1st witness Mr. Phares Oluoch Miyere testified that on 29th June 2012 the claimant was called to the office to explain what happened. He was present together with the shop steward when the claimant was called. According to him the claimant admitted taking the items in issue. He further stated that the claimant did not sign the letter admitting she took the clothing material but left instead. It was Mr. Miyere's evidence that the union and the respondent agreed that the claimant be paid her terminal dues as set out in appendix 4 of the respondent's bundle of documents. It was further the evidence that the claimant had no major disciplinary issue.

7. The respondent's 2nd witness Mr. Joseph Omwenga Aboki informed the court that he worked for the respondent as a machine operator and that he was also a shop steward. On 29th June 2012, he was called to the office and found the claimant, Mr. Oluoch and his boss. According to him, the claimant was accused of attempting to steal clothing material. He stated that the claimant admitted the charges and asked for forgiveness but refused to sign appendix 2 as evidence of such admission.

8. Termination of employment contract has to be for a valid and justifiable reason. The claimant herein was terminated for allegedly attempting to steal clothing material from the respondent. The evidence of such attempted theft was based on her implication by a colleague

who was found with the clothing items. The claimant denied any involvement and refused to sign a statement admitting to such attempted theft. His colleague who was found in possession of the said items agreed to sign letter of admission and was not dismissed.

9. The respondent did not provide any corroborative evidence implicating the claimant in a conspiracy with Nathan to steal the said clothing items. Furthermore, the said Nathan was never called to give evidence for whatever it was worth; that it was indeed the claimant who gave him the clothing items.

10. Justification or proof of reason for dismissal is placed by the Employment Act on the employer. Proof here is on a balance of probabilities. The evidence on the basis of which the claimant was dismissed was Nathan's word against hers. This was not sufficient proof of the reason for the claimant's dismissal as contemplated under Section 43 (1) and 47 (5) of the Employment Act.

11. The court therefore finds and holds that the termination of the claimant's services was unfair within the meaning of Section 45 (1) of the Employment Act and enters judgment against the respondent in favour of the claimant as follows: -

Kshs

(a) Two months' salary in lieu of notice 18,023.20

(b) 19 days pay in lieu of leave 8,153.35

(c) Ten months' salary as compensation for
unfair termination of services 90,116

Total **116,293.00**

(d) Costs of the suit

(e) Claimant be issued with certificate of service.

(f) Items (a) – (c) shall be subject to taxes and statutory deductions.

12. 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