



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1461 OF 2013

(Before Hon. Lady Justice Hellen S. Wasilwa on 1st March, 2018)

BRIAN ONYANGO OKUMU.....CLAIMANT

VERSUS

EAST LAND HOTEL LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant filed suit on 9.9.2013 seeking damages for unfair termination and payment of terminal dues.
2. He states that at all material times and particularly on 25.1.201 he was employed by the Respondent as a Room Steward and continuously worked to the satisfaction of the Respondent earning a salary of 14,100/= per month.
3. He avers that on 20.5.2013, he was summarily dismissed vide a letter of even date on the grounds that he had conspired with another employee to misappropriate Company funds which allegation he denies.
4. He further avers that contrary of the provisions of the labour laws he was not heard and no evidence was tendered against him to prove the allegations against him and he only became aware of the case abruptly when he received the summary dismissal letter.
5. It is the Claimant's contention that the termination was unlawful, unfair and inhumane and prays for damages in lieu thereof.
6. The Respondent opposed the Claim and filed a Memorandum of Response wherein they deny the allegations in the Claim and avers that on 10.5.2013, the Claimant in a bid to enrich himself intentionally did not record that Room number 330 was occupied, which room was indeed occupied by a guest who checked in at 1809 hours of the same day and the Respondent only learnt of this when the guest was checking out when his checking in details could not be found. That after due investigations, the Claimant's services were summarily terminated with effect from 18.5.2013.
7. That the Claimant recorded a statement with the Respondent, which the Respondent did not take as the truth in light of CCTV footage in their possession. They advised the Claimant on how to collect his terminal dues which to date he has failed to collect. They pray for the claim to be dismissed with costs.
8. The Respondent were served with the hearing notice for the matter but failed to attend Court on the

appointed day and thus the matter proceeded ex parte.

9. At the hearing the Claimant led evidence as per his Memorandum of Claim and urged the Court to award him damages as prayed for therein.

Submissions

10. The Claimant's Counsel submits that there was no reason established by the Respondent to justify the summary dismissal of the Claimant. It is submitted that the evidence in Court was that the Claimant was a room steward and the person charged with the responsibility of receiving and billing clients was the receptionist.

11. The footage of the fateful day was not shown to the Claimant before dismissal and it is thus submitted that the incident did not take place and therefore there was no reason for dismissal.

12. Counsel also submits that due procedure was not followed in the events preceding the dismissal. That the Claimant led evidence to the effect that he did not participate in any disciplinary hearing despite being accused of engaging in theft as captured by the CCTV cameras. Counsel urges that this was illegal as the Claimant was condemned unheard. He cites the case of **Kenya Union of Domestic Hotels, Educational Institutions & Hospitals Workers Union Vs Mombasa Sports Club Cause No. 440 of 2013** where it was held that termination of an employee is unfair if the employer fails to prove that the reason for termination is valid and the said reason is a fair reason.

13. As a result of the illegalities in the termination, the Claimant prays for unpaid salary for the month of May, 2013, Notice pay, accumulated leave allowances and damages for unfair termination.

14. I have examined the evidence and submissions submitted before me. I note that the Respondent failed to prosecute their case on the date scheduled for hearing on 23/11/2017. The case therefore proceeded undefended.

15. From the Claimants evidence, he was summarily dismissed for apparently defrauding the Respondent. This, the Claimant denied doing. The Respondents did not give the Claimant an opportunity to defend himself. This was against fair administrative action which presupposes that a man should not be condemned unheard.

16. The Respondent had averred that the Claimant had been captured on CCTV. The CCTV captions were not shown to the Claimant. In effect, this Court finds that the act of dismissing the Claimant without following due process was unfair and unjustified.

17. The Claimant was employed on a one year contract with effect from 25/1/2013. He was dismissed on 20/5/2013 and a great portion of his contract was unserved i.e. 7 months and 20 days.

18. In the circumstances, I find that the Claimant has proved his case as per law. I award him as follows:-

1. 7 months 11 days salary for period unserved and not paid for = (15,471 x 7) + (11/30 x 15,471) = 108,297 + 5,673 = 113,970/=.

2. Leave days earned = 4,641/=.

3. Damages for unfair termination equivalent to 10 months salary = 109 x 15,471 = 154,710/=

Total = 324,383/= less statutory deductions

4. The Respondent will pay costs of this suit plus interest with effect from the date of this judgement.

Dated and delivered in open Court this **1st day of March, 2018.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties