



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 776 OF 2012

RUTH MWIKALI NDIKU.....CLAIMANT

v

AFRICA APPARELS EPZ LIMITED.....RESPONDENT

JUDGMENT

1. Ruth Mwikali Ndiku (Claimant) was employed by Africa Apparels EPZ Ltd (Respondent) as a Checker- Finishing in 2010 on a 6 month contract.
2. In 2012, the Claimant commenced legal proceedings against the Respondent alleging unfair termination of employment and breach of contract. She sought Kshs 26,367/- on account of the violations.
3. On 6 July 2012, the Claimant filed an *Amended Memorandum of Claim* in which she included a claim for loss of earnings bringing the total quantified claim to Kshs 131,835/-.
4. The Respondent filed its Response on 24 May 2013 denying that it unfairly terminated the Claimant's employment. It was contended that the contract was terminated on account of insubordination and that the Claimant was paid all dues.
5. The Cause was heard on 14 February 2018 and 24 April 2018.
6. The Claimant filed her submissions on 2 May 2018 while the Respondent filed its submissions on 18 May 2018.
7. The Court has considered the pleadings, evidence and submissions and identified the Issues arising for determination as, *whether the dismissal of the Claimant was unfair and appropriate remedies.*

Unfair termination of employment

Procedural fairness

8. The Claimant's testimony was that on 20 October 2010, a supervisor (who she did not name) questioned her about the daily targets early in the day and then abused her (nature of abuse was only disclosed during cross examination). The Supervisor then threw her out.
9. Because the Personnel Manager was not in, the guards advised her to return the next day but the Personnel Manager did not allow her to make any representations save to apologise.
10. The Claimant asserted that she was not afforded an opportunity to be heard or given notice of termination.
11. Under cross examination, the Claimant admitted that she made comments in an *Incident Report* maintained by the Respondent.
12. The Respondent's first witness was the Human Resources Manager. Her testimony was that after an incident between the Claimant and the Supervisor, the same was booked in the *Incident Report* and the Claimant made comments therein.
13. The Court has looked at the Incident Report. It details the *incident and time it took place* and required the Claimant to *show cause* why disciplinary action should not be taken against her for throwing a trimmer at a supervisor, and a job card at the Factory Manager.

14. In her comments, the Claimant admitted the incident as captured and sought for forgiveness.

15. In the view of the Court, the process as adopted by the Respondent met the statutory minimum requirements as contemplated by section 41 of the Employment Act, 2007 save that there was no colleague of the Claimant present.

16. The Claimant did not suggest that the failure occasioned her any injustice.

Substantive fairness

17. In terms of sections 43 and 45 of the Employment Act, 2007, the Respondent had to prove the reasons for dismissing the Claimant and further that the reasons were valid and fair.

18. The reason given for the dismissal of the Claimant was throwing a trimmer at a supervisor. The Claimant did not deny that allegation in her written response.

19. That was a misconduct and the Court finds that the Respondent has proved that it had a valid and fair reason to dismiss the Claimant.

20. The summary dismissal was substantively fair.

21. Before concluding the Court notes that the Claimant introduced a cause of action of sexual harassment (sexual harassment as part of the reason for dismissal) in the work place.

22. However, the question of sexual harassment was not pleaded and in the view of the Court it was an afterthought.

23. Overall, the Court finds that there was no breach of contract warranting any of the reliefs sought by the Claimant.

Conclusion and Orders

24. The Court orders that the Cause herein be dismissed with no order as to costs.

Delivered, dated and signed in Nairobi on this 13th day of June 2018.

Radido Stephen

Judge

Appearances

For Claimant Ms. Ochogo instructed by Gakoi Maina & Co. Advocates

For Respondent Ms. Ashubwe instructed by Eshiwani Ashubwe & Co. Advocates

Court Assistant Lindsey