



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE 563 OF 2011

ANTHONY IRUNGU MUGURO CLAIMANT

VERSUS

KENYA POWER AND LIGHTING COMPANY RESPONDENT

JUDGMENT

1. The claimant pleaded that he was employed by the respondent as a foreman on permanent and pensionable terms. His salary at the time of dismissal was Kshs. 195,805 per month. He further pleaded that his contract was governed by the respondent's code of conduct and he would not be dismissed unless as provided in the code of conduct. The claimant further pleaded that it was an implied term that his contract would be terminated by giving one-month notice on either side or payment in lieu. He further contended that it was an implied term that the contract could only be determined by reasonable notice.

2. On 14th May, 2008 he averred that the respondent terminated his services without notice or payment in lieu. According to the claimant his dismissal was based on the allegation that he stole a transformer on the night of 26th and 27th February, 2008 and unauthorized disconnection of electric power by reason of which he alongside others were arraigned in court and later acquitted of the charges under section 210 of the Criminal Procedure Code as there was no evidence to connect him with charges. The claimant therefore sought damages in form of pension until retirement, leave allowance till retirement, mileage allowance till retirement and one month's salary in lieu of notice.

3. The respondent on its part denied it was obligated to employ the claimant until retirement. According to the respondent, the claimant was dismissed lawfully in full compliance with the respondent's rules and regulations to which the claimant subscribed.

4. In his evidence in court, the claimant further stated that he was based at Ruiru where he was in charge of operations and maintenance of power lines and attending to emergencies. It was his evidence that on 8th May, 2008 a friend called Karanja who was one of the respondent's contractors called him and requested if he could help carry some tools from Kigumo to Ruiru since his vehicle had broken down. He met the friend at Ruiru at 5.00 p.m. and together they left for Kigumo.

5. At Kigumo shopping Centre they picked some tools and they were to pick others from a private residence. They did not find the owner of the premises so they decided to take some refreshments as they waited for the person to come. They waited until around 10.00 p.m. when Karanja told him the person had come. They found an old lady whom he was told was the landlady. The lady informed them that the person they wanted to see had been picked by police. They went to Kibishoi police station. They introduced themselves to the police and when he informed the police he was an employee of the respondent and identified himself through his staff identity card, the OCS ordered his arrest as suspect for theft of a transformer.

6. He stayed overnight in police cell and the next day the police took him to his house and did a search and only his work helmet was found. He was later taken to Githunguri Law Courts and charged. On 19th May, 2008 he was issued with a dismissal. According to him, he was never given a chance to defend himself before the dismissal. In cross-examination the claimant stated that he had no letter from the respondent authorizing him to assist Karanja. According to him, he needed no authorization to do so.

7. The respondent's witness Mr Zachary Ombati informed the court that the claimant was the only respondent's employee arrested over the incident of theft. According to him, transformers can be replaced but the job must be assigned from the office. This was not done in the claimant's case. In cross-examination he stated that he was not present when the claimant was arrested but went to the police station the same night of arrest. According to him, he was informed that the claimant and the others were arrested behind the police station where there was a transformer.

8. The claimant was summarily dismissed on 14th May, 2008 less than a month before the commencement of the current Employment Act. The previous Act did not provide for the right to be heard before a dismissal or termination could be done. The Act further never provided for compensation for unfair termination as in the current Act. Compensation for unfair termination was guided by the English common law

position which was that the measure of damages payable to an employee wrongfully dismissed or unlawfully terminated was equivalent to wages or salary payable in lieu of the notice provided for in the contract of employment. The claimant's contract provided that it could be terminated by either party giving one month's notice of termination or salary in lieu.

9. The claimant has contested the reasons for termination of his services and pleaded his innocence. This was further bolstered by the fact that he was acquitted of the charges he faced and which were the same grounds for his dismissal. However even if the court were to make a pronouncement that the claimant's dismissal was wrongful, that would not change the position at common law which was the applicable law when this cause of action accrued besides under this regime of law an employer was under no obligation to assign any reason for dismissal or termination of employment. Good faith however prevailed and nearly all employees dismissed or terminated knew the reason for such dismissal or termination.

10. The claimant's claim for payment up to retirement for pension, leave allowance and salary therefore has no foundation in law and in any event, the contract was terminable by the parties upon giving one month's notice on either side. In the circumstances the court reaches the conclusion that the claim is without merit and hereby dismisses the same with costs.

11. It is so ordered.

Dated at Nairobi this 20th day of July, 2018

Abuodha J. N.

Judge

Delivered this 20th day of July, 2018

Abuodha J. N.

Judge

In the presence of:-

.....for the Claimant

.....for the Respondent.