



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NO 899 OF 2014

EVANS OSORO.....CLAIMANT

VERSUS

TANDU ALARM SYSTEMS LIMITED.....RESPONDENT

JUDGEMENT

1. The claimant pleads that he was employed on 27th April, 2005 on casual basis receiving a salary of Kshs 5,330.50. He was later promoted to a supervisor at salary of Kshs 10,430.20. He served in this position for the two years and one month upto February, 2011 when he claimed the respondent demoted him to the position of a guard at a salary of Kshs 11,834.11.

2. The claimant further pleaded that he served the respondent with diligence and loyalty until October, 2013 when the respondent wrongfully and unfairly terminated his contract without notice. The respondent neither gave him an opportunity to be heard nor properly be served with a warning letter. The claimant further claimed that the respondent never paid him paternity and terminal dues and owed him severance pay.

3. The respondent on its part pleaded that on or about January, 2009 the claimant was appointed as a supervisor in acting capacity at a gross pay of Kshs 10,430.20. Later he underwent screeners training facilitated by the respondent and upon completion was promoted to a position of permanent screener at additional allowance of Kshs 1000/=. The claimant served in that position until 24th October, 2013 when he was lawfully dismissed for absence from duty as a result of working for another company while still in the employment of the respondent yet claiming he was on sick leave.

4. In his oral evidence, the claimant stated that he received in 2012 an email on reduction of assignments and was asked to report for redeployment at the Head office. When he reported he was posted to Kenya Breweries and later assigned to screening at the airport where he worked for six months. He stated that he was dismissed because he went on leave but did not return on due date. According to him when he returned from leave he produced a letter showing he was unwell but was told the letter was not genuine.

5. The claimant further stated that he went for disciplinary hearing about eight times but the hearing only took off on 15th October, 2013. He was asked to call a colleague with him but he could not because his colleagues were at work. At the disciplinary hearing, he was accused of working elsewhere while still in respondent's employment. He admitted that there was a place he worked shortly while on leave.

6. In cross-examination, he stated that he had no letter appointing him a supervisor but his work Id described him as supervisor. He further stated that he went on leave on 26th August, 2013 and was to resume on 25th September, 2013 but did not do so. He instead sent a message to the control room saying he was unwell. Concerning his employment at Trade Winds Aviation he stated that he was appointed as a Security Guard for two years and that he signed the contract. He further stated that he was paid his terminal dues upon termination.

7. The respondent witness Avine Nyambura stated that she joined the respondent in May 2016 and got to know of the claimant from employee records. It was her evidence that she came across the claimant's leave application form and that the claimant applied for and went on leave on 26th August, 2013 but did not report back to work when his leave ended.

8. The claimant was issued with a show cause letter but did not respond to the same. He was subsequently invited to a disciplinary hearing which he attended and signed the minutes confirming they were a true reflection of the proceedings. The claimant was consequently summarily dismissed. On the issue of paternity leave, it was her evidence that the claimant never produced a notification of birth to entitle him to paternity leave,

9. The claimant herein did not deny that he absented himself from work when he was due back from leave. He claimed he was unwell and produced a medical sheet which he purported was from Evama Medical Clinic that he claimed attended to him. The respondent was not satisfied with the medical sheet and asked the claimant to get a proper doctor's report. The claimant failed to do so. Further the claimant

was issued with a show cause letter which demanded he explains his absence from work claiming he was unwell yet the respondent had obtained information that he was working for Trade Winds Aviation. The claimant denied he was working for Trade Winds Aviation and reasserted that he was sick yet failed to produce a report from a doctor as demanded by the respondent.

10. In his oral evidence, the claimant admitted that indeed he was offered a contract for two years at Trade Winds Aviation and worked there for a week and resigned because the conditions were not good. The claimant therefore struck the court as an untruthful and dishonest person.

11. Absence from work without authority is a ground for summary dismissal. The claimant did not deny he was absent from work. He lied that he was unwell during his alleged absence yet he was working at Trade Winds Aviation. Therefore, there existed a valid and justifiable reason for the termination of claimant's service.

12. Concerning the process for termination, the claimant was issued with a show cause letter to which he responded. He was further invited for a disciplinary hearing which he attended and signed the minutes as an acknowledgement that they were a true record of what transpired. Upon dismissal the claimant was paid his terminal dues which he acknowledged and stated that he had no further claims against the respondent.

13. In conclusion, the court finds and holds that there existed valid grounds for the termination of the claimant's service and further that proper procedure was followed in doing so and further that the claimant was paid his lawful dues upon termination.

14. The claim is therefore found without merit and is hereby dismissed with costs.

15. It is so ordered.

Dated at Nairobi this 20th day of July, 2018

Abuodha J. N.

Judge

Delivered at Nairobi this 20th day of July, 2018

Abuodha J. N.

Judge

In the presence of:-

..... for the Claimant

..... for the Respondent