



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CASE NO 468N OF 2009

HENRY OVIYO & 4 OTHERS.....CLAIMANT

VERSUS

NAIROBI BOTTLERS LTD.....RESPONDENT

JUDGMENT

1. This suit was consolidated with cause numbers 511N of 2009, 1192 of 2009, 1193 of 2009 and 1196 of 2010. This judgement dispose of all the suits consolidated with this suit. The claimants were former employees of the respondent working in various capacities. They claimed to have been unfairly terminated by the respondent.

2. According to Mr Kevin Adero Opiyo, on 19th February, 2008 they reported to work and were told they were needed for a disciplinary hearing before the disciplinary committee. They reported and were each asked what they know about fuel siphoning. According to them, they were not given a chance to prepare nor call witnesses.

3. According to Mr Opiyo, they wrote statements over the accusations and their services terminated thereafter. They were then arrested and taken to custody but later released without any charges preferred against any of them. He further stated that they were shown photographs of people siphoning fuel but according to him, the photographs were not clear. One could not identify the number plate of the vehicles in the picture.

4. Upon termination, the respondent paid them one month's salary in lieu of notice and for the days worked. They were further paid their provident fund contributions. The respondent though filed a defence to the claims, did not call any witnesses at the trial. The claimant's herein were dismissed in February, 2008. The applicable law then was the repealed Employment Act (cap 226).

5. Under that Act, there was no requirement that before an employee's service is terminated there should be a disciplinary hearing. A contract of employment then could be terminated by simply issuing one-month's notice or by giving one month's wages in lieu of notice. The remedy for unfair termination of service is only found in the present Employment Act. The Act came into operation on 2nd June, 2008 and there is no provision for retrospective application.

6. In the circumstances, the court does not have jurisdiction to award the remedies sought by the claimants since they are based on a statute that did not exist at the time their causes of action accrued.

7. The suit is therefore dismissed with no order as to costs.

8. It is 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