



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**

**KENYA AT NAIROBI**

**CAUSE NO 292 OF 2014**

**HILLARY OBADE.....CLAIMANT**

**VERSUS**

**SANOFI-AVENTIS KENYA LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The claimant averred that he was a permanent employee of the respondent until 13<sup>th</sup> March, 2013 when the respondent summarily dismissed him. The claimant pleaded that on 27<sup>th</sup> February, 2013 his line manager emailed and subsequently called him and asked him to do a formal report on his job itinerary for 26<sup>th</sup> February, 2013 and submit the same on 28<sup>th</sup> February, 2013.
2. The claimant duly executed the instruction and was at the respondents offices on 28<sup>th</sup> February, 2013. He was ushered into the respondent's office by his line manager and therein he found the Country Manager and Human Resource Co-ordinator. According to him the meeting took the form of an inquiry whereat he was questioned on his previous work schedules after which he was summarily dismissed. The claimant contended that the process leading to his summary dismissal was illegal, unfair, premeditated and actuated by malice.
3. The respondent admitted sending an email to the claimant requesting him to prepare a written report on his work activities on the 12<sup>th</sup> February, 2013 and to appear before the respondent's Country Manager's office the following day on 28<sup>th</sup> February, 2013 to explain the contents of the report. The respondent further averred that the request was mad on reasonable suspicion that the claimant had failed to attend to an assignment as directed by his superiors and arising from contradiction between his reports and that filed by his colleagues regarding business activities during working hours. The suspicion was justified because it turned out that the claimant had instead of attending to work on 12<sup>th</sup> February, 2013 been attending to personal business during that day's working hours.
4. The respondent further averred that its line manager's actions and subsequently the respondent's manager in the hearing of 28<sup>th</sup> March, 2018 were done in ordinary course of business and were fair and justified. At the hearing the claimant adopted his statement filed on 23<sup>rd</sup> March, 2016 in which he additionally stated that the meeting of 28<sup>th</sup> February, 2013 took the form of an inquiry and or disciplinary hearing. He was interrogated about his previous work schedule other than 12<sup>th</sup> February, 2013. According to him, it then became apparent that the respondent wanted to take him by surprise.
5. He further stated that during the meeting of 28<sup>th</sup> February, a number of contradictions were noted in his previous work schedule for 12<sup>th</sup> February, 2013 for which he duly apologised and even offered to resign. The respondent rejected his offer of resignation and instead dismissed him from service through a letter dated 13<sup>th</sup> March, 2013. The claimant contended that although he may have made a mistake in previous operations work schedules and even offered to resign, the process leading to his dismissal was unfair, unprocedural and the same violated his right to fair labour practice.
6. The claimant further contended that respondent wilfully breached its own disciplinary procedures contained in the Human Resource Handbook which required that at every stage in the procedure an employee will be advised of the nature of the complaint and given the opportunity to state his or her case.
7. The respondent too filed a witness statement through Ms Helen Gatumuta which they adopted at the hearing. She stated among others that she was the Head of Human Resource and Communication of the respondent. On 12<sup>th</sup> February, 2013 the claimant and his colleagues went about their usual field visits. After one such visit a report from Business support showed concerns regarding the claimant's wilful neglect of his duties during working hours contrary to clause 5 of the employment contract which prohibited him from directly or indirectly engaging in any other business during working hours as well as the requirement that he would elevate his whole time and attention to services of the company.

8. Ms Gatumuta further stated that on 29<sup>th</sup> February, 2013 the claimant was at the respondent's offices for disciplinary hearing before his line Manager, Human Resources Manager and Country Manager. At the hearing the claimant had the right to be accompanied by a work colleague as per clause (d) of the disciplinary policies and procedures but he failed to do so.

9. As the disciplinary proceedings were going on the claimant wrote to the respondent a letter dated 11<sup>th</sup> March, 2013 admitting his dishonestly and sought forgiveness. On the same day the claimant wrote another letter purporting to resign from the respondent within a month. On 13<sup>th</sup> March, 2013 the claimant was summarily dismissed following the decision after the disciplinary hearing.

10. The claimant herein seeks the declaration of the court that his summary dismissal was illegal and further sought damages for unlawful dismissal. The summary dismissal letter dated 13<sup>th</sup> March, 2013 gave ground for dismissal as among others presentation of false information, late reporting and planning as per the respondent's guidelines.

11. By a letter dated 1<sup>st</sup> March, 2013 the claimant wrote to the respondent's country manager and apologised for his actions related to optima field activity. In the letter, the claimant stated that he owned up and took personal responsibility for his actions and more so in relation to his contradictory statements and dishonesty as pertains to his commitment to the company. By a letter of even date, the claimant tendered his resignation with effect from 30<sup>th</sup> March, 2013 and asked for the processing of his entitlements for the period he had been with the organisation. This letter of resignation was rejected by the respondent for the reason that it was pretended before the disciplinary process was completed.

12. In his oral evidence, the claimant stated that his apology letter had nothing to do with the events of 12<sup>th</sup> February, 2013 and further that there was nothing wrong with apologising. He further stated that he opted to resign because the atmosphere was already poisoned. He further stated that he was later called to appear before the administration and was on 13<sup>th</sup> March, 2013 dismissed.

13. The claimant on his own volition apologised for his actions which in his own words were contradictory and amounted to dishonesty as pertains to his commitment to the respondent. The claimant further opted to resign. Although he claims the atmosphere at work was not conducive, as a result of which he resigned, no such thing is mentioned in his letter.

14. In the circumstances, it does not appear to the court to be truthful that the respondent unlawfully dismissed the claimant. The reasons for which the claimant was dismissed were the self-same reason for which he apologised and took responsibility. There was no obligation on the respondent to accept the apology and not take any disciplinary action it deemed fit in the circumstances.

15. The court therefore finds the claimant's claim unmerited and hereby dismissed the same with costs.

16. It is ordered.

**Dated at Nairobi this 20<sup>th</sup> day of July, 2018**

**Abuodha J. N.**

**Judge**

**Delivered at Nairobi this 20<sup>th</sup> day of July, 2018**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

..... for the Claimant

.....for the Respondent