

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 2123 OF 2015

KENYA SHOE AND LEATHER WORKERS UNION.....CLAIMANT

- VERSUS -

FAST TRACK MANAGEMENT LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Thursday 12th July, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 02.12.2015 alleging the unfair termination of its members Daniel Makambo Ndiri and Alfred Ndambuki John (the 1st and 2nd grievants respectively) and being members of the union. The claimant prayed for payment of Kshs. 172, 350 to the 1st grievant and Kshs.183, 632.00 to the 2nd grievant on the headings of one month pay in lieu of notice; gratuity; 12 months compensation under section 49 of the Employment Act, 2007; and further prayed for the certificate of service.

The memorandum of defence was filed on 15.11.2016 through J.N Namasake & Company Advocates. The respondent prayed that the suit be dismissed with costs.

The parties gave evidence to support their respective cases and the final submissions were filed for the parties.

The evidence is clear. There is no dispute that the respondent employed the grievants on a fixed term contract. The respondent had been contracted to provide workers to a shoe making company, the Bata Company in Limuru. The claimants served on three months' fixed term contract and they would be engaged on similar fixed term contracts whenever there was work to be done at the Bata Company in Limuru. Clause 2 of the contract stated thus, "**The contract may be renewed at the discretion of the employer based on work requirements and demands.**" Further, clause 5 of the contract provided thus, "**The Company retains the right to determine your continued employment or renewal of the contract based on work availability, conduct among others.**"

On 25.06.2014 the respondent was informed by the Bata Company that its factory would be operating at half production. The staff whose contracts were expiring were relieved of their duties to be recalled when the when work would normalise. The two grievants were amongst those who were relieved from duty. While on off their contracts expired and the evidence was clear in that regard.

On 16.07.2014 the respondent's supervisor Rachel Kamau received a message that the 1st grievant was inciting his workmates not to report on duty on 19.07.2014 – being the employees who were left to work as Bata Company operated at half capacity. The human resource manager at the Bata Company advised the said Rachel to take up the matter with the 1st grievant. In the process, the two grievants threatened to lynch Rachel. That was by communication between the said Rachel and the grievants on the cell phones. The evidence was that the grievants were not happy being relieved during the time the Bata Company was on half operation. The 2nd grievant admitted calling Rachel's cell phone while on leave after the 1st grievant showed him the text message from Rachel that the 1st grievant was inciting workers not to go on duty. When the grievants resumed duty they were given opportunity to explain the allegations of threatening Rachel on phone. The grievants desired that their contracts be renewed but in view of their conduct against the supervisor Rachel, the respondent decided not to renew the contracts. That was on or around 10.09.2014 after the grievants had wanted to resume duty on 09.09.2014.

The Court has considered the statements by the grievants dated 10.09.2014 and finds that the grievants substantially admitted their misconduct. The Court finds that they were careless and not cautious as expected of a good employee dealing with their supervisor. In such circumstances the Court returns that the respondent has established that there was a good reason not to renew the claimant's expired contracts of service. Further, the contracts having expired, it cannot be said that they were unfairly dismissed. The Court returns that it was a case of failure to renew the three months fixed contract and the grievants' behaviour towards their supervisor justified the refusal to renew as the misbehaviour was a good reason and envisaged in the terms and conditions of the ending contract as a ground to deny renewal.

The grievants are entitled to the certificates of service and in view of the delayed delivery, each party shall bear own costs of the suit.

In conclusion judgment is hereby entered in the suit with orders:

- a. The respondent to deliver a certificate of service to each grievant forthwith.
- b. Each party to bear own costs of the suit.

Signed, dated and delivered in court at Nairobi this Thursday 12th July, 2018.

BYRAM ONGAYA

JUDGE