



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NO 2478 OF 2012

EVANS NANDOYA CHAKAYA.....CLAIMANT

VERSUS

AFRICA APPAREL (EPZ) LTD.....RESPONDENT

JUDGEMENT

1. The claimant pleaded that he was employed by the respondent on 5th April, 2008 working in the cutting department in the respondent's factory. On 5th May, 2011 he pleaded he was without any warning of stolen material arrested by the respondent and charged. According to him the materials were stolen from the store where he had no access. He further pleaded that the respondent had strong checking system with several security man and cameras which could have captured him stealing the alleged items.
2. According to the claimant he was arrested, discriminated upon and refused an opportunity to be heard before the respondent's management. The claimant further averred that he was maliciously prosecuted but acquitted of the charges on 2nd February, 2012. The claimant stated that on 13th May, 2011 he was unlawfully summarily dismissed without notice.
3. The respondent on its part pleaded that the claimant was arrested on suspicion of having stolen the respondent's property. According to the respondent, the police conducted their independent investigation and determined that there was reasonable and probable cause. The respondent further stated that the claimant was granted an opportunity to give a written explanation which was found to be unsatisfactory thereby warranting his summary dismissal on account of gross misconduct.
4. In his evidence in Court, the claimant stated that on 5th April, 2011 his colleague called and told him the Manager wanted to see him. He took with him his record of fabrics and was told some fabric was lost. According to him, his records showed no loss. He was asked to see the Human Resources Officer where he was informed again about the lost fabric but denied involvement.
5. It was his evidence that the material lost was about 8 rolls of fabric and could not be carried away without the help of a vehicle. According to him the dismissal was unfair because he was not given a hearing before the dismissal. He was paid Kshs 10,880/+ as terminal dues.
6. In cross-examination he stated that he had no document to show he was paid travelling allowance and the respondent used to issue contracts of employment. He further stated that he never asked for leave and that if one asked for leave, he would be dismissed. He stated that he kept the fabric record and that the record was a rough record and later transferred to the computer. He denied removing pages from the book. He however admitted removing a page from the book because the records were fumbled up and wanted to rectify the mess. He denied that the books exhibited by the respondent were his.
7. The respondent's witness Ms Virginia Wanjira stated that she was the Human Resource Manager of the respondent. According to her it was reported that the claimant tore pages from the receiving book and inflated some entries. The claimant could not reasonably explain why he tore the records and recorded afresh. Ms Wanjira further stated that the claimant was taken through disciplinary hearing and that he refused to record a statement or call a witness. She further stated that at the end of each annual contract, leave would be encashed. In cross-examination she stated that the claimant was not caught with any stolen material.
8. From the letter of dismissal it would seem the claimant was dismissed over his action of destroying records which the respondent perceived as concealment of discrepancy in yardage of fabric received by the claimant and the store records. The claimant conceded to tearing pages from the record book but justified his action that he wanted to make a clean record since the one he had was fumbled up. The claimant was working under supervision and the record book in his custody was a property of the respondent. It was a sensitive document containing a record of fabric received. If there was need to tear off a page because it was fumbled up as he claims, he ought to have sought authority before doing so. Besides why tear a page and not simply cancel the fumbled record and make a more organized one on a fresh page.

9. The claimant may not have been caught with any missing fabrics but his action leads to the conclusion that he could have been complicit in the matter. The respondent therefore had a valid and justifiable reason to dismiss the claimant. Concerning the process followed, the claimant stated that he was called by the Manager and the Human Resource Office and questioned about the missing fabric.

10. The record of disciplinary action attached to the statement of Virginia Wanjira and which the claimant never disputed clearly showed he was in attendance at the disciplinary hearing and the charge he was facing was falsification and destruction of company's records. The minutes further state that the claimant refused to discuss the issue at the disciplinary hearing and also refused to call witnesses. To this extent the court is satisfied that the reason and process followed in terminating the claimant's service was in compliance with the Employment Act.

11. The claimant was paid his dues upon termination hence the claims set out in the memorandum of claim are without merit and are hereby dismissed with costs.

It is ordered.

Dated at Nairobi this 9th day of August, 2018

Abuodha J. N.

Judge

Delivered at Nairobi this 9th day of August, 2018

Abuodha J. N.

Judge

In the presence of:-

..... for the Claimant

..... for the Respondent