



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE 5 OF 2014

JAMES AJACK NDEGE.....1ST CLAIMANT

ANTHONY MUHINDI.....2ND CLAIMANT

VERSUS

GOLDEN HARVEST MILLS

(also trading as Uzuri Foods Limited.....RESPONDENT

JUDGEMENT

1. The claimant averred that they were respondent's employees working as cleaners in the Milling Department. They were employed in May, 2008 and January, 2004 respectively. On 21st August, 2013 their services were terminated on allegations that they were unhygienic at the workplace.

2. The claimants complained that having worked overnight the respondent never gave them time and an opportunity to explain themselves before their services were terminated. The claimants therefore contended that the termination of their services was unfair, uncalled for and wrongful. The claimants therefore sought compensation for unfair termination of service and their terminal dues.

3. The respondent pleaded that the claimant's inefficiencies and negligence resulted in their summary dismissal. The respondent further stated that the claimants had been told the reason for their termination was poor performance and refusal to obey after several warnings with regard to their inefficiency.

4. In their oral testimony in court, the 1st claimant additionally stated that he used to report to work at 7:30 am and leave at 4:30 pm and that his monthly salary was Kshs 10,435/=. He further reiterated that he was terminated without any disciplinary hearing. In cross-examination, he stated that there was no agreement on passage and baggage allowance and on being given three month's pay in lieu of notice. He denied anyone was paid in lieu of leave in November. He further stated NSSF was remitted by the respondent.

5. The 2nd claimant stated he was on night shift from 4:30 pm – 7:30 am. He used to work for 7 days a week and took his annual leave. The 2nd claimant sought to be paid for the untaken leave. He also said he was never issued with a show cause letter and no disciplinary hearing was conducted. In cross-examination he stated that he was not aware of leave encashment. He further stated that the respondent remitted NSSF dues.

6. The respondent's witness Mr Douglas Nyagaka stated that on August, 2013 the operations manager reported the mill area was dirty and the claimants were the ones on duty the previous shift. He checked the mock area and confirmed it was dirty. According to him, there were previous complaints about keeping the work area clean. A decision was therefore made to dismiss the claimants. Their dues were calculated and became payable once they cleared. He further stated that the claimants never collected their terminal dues. According to him the claimant were only entitled to one month's notice or payment in lieu of notice. It was further his evidence that untaken leave was uncashed in November. In cross-examination he admitted that the claimants were never issued with notice to show cause and no disciplinary hearing was conducted before dismissal.

7. Termination of employment is the prerogative of an employer but it has to be exercised in accordance with the law and rules of natural justice. The reasons for termination of employment varies from case to case. Some employers would dismiss for minor infractions while others would not. The general test is usually that of a reasonable employer. That is to say if a reasonable employer confronted with the infractions would dismiss, If the answer is yes, then the dismissal or termination would be upheld.

8. The claimants herein were dismissed for failure to keep their working area clean although the respondent claimed the claimant had previously been warned, no warning letter was produced to vouch for this.

9. In terms of process for termination the respondent's witness conceded that no notice to show cause was given to the claimants and further that no disciplinary hearing was held. It is a requirement of the Employment Act that before terminating the services of an employee the employer must call up such employee to answer to the accusations for which dismissal is being considered. This did not happen in this case. The court therefore reaches the inevitable conclusion that the termination of the claimant's services was unfair.

10. Concerning overtime, the payslips attached by the claimants showed overtime was paid hence it was incumbent upon the claimants to itemize which months overtime was not paid and support the claim with payslips where payment of overtime was not factored.

11. The court therefore awards the claimants as follows:

a. James Ajack Ndege	Kshs	
i. One month's salary in lieu of notice		10,435
ii. Eight months salary as compensation		
for unfair termination		<u>83,480</u>
		<u>93,915</u>

b. Anthony Muhindi	Kshs	
i. One month's salary in lieu of notice		11,304
ii. Eight months salary as compensation		
for unfair termination		<u>90,432</u>
		<u>101,736</u>

c. Both claimants shall have costs of the suit and further items (a) and (b) shall be subject to taxes and statutory deductions.

12. It is so 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.