



**REPUBLIC OF KENYA**

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

**AT NAIROBI**

**CAUSE 732 OF 2014**

**JUSTUS MASINDE BARASA.....CLAIMANT**

**VERSUS**

**METAL CROWNS LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The claimant pleaded that he was employed by the respondent as printing supervisor from 13<sup>th</sup> September, 2010 at a monthly salary of Kshs 55,000/= which was later increased to Kshs 68,286/= by the time his services were terminated.

2. The claimant averred that the respondent terminated his services unlawfully and wrongfully on grounds that he frequently demanded parts of his annual leave. He further pleaded that he was subjected to pressure when he signed a discharge and clearance certificate to allow the respondent carry out the alleged wrongful and unlawful calculation of his terminal benefits. The claimant therefore sought from the court an order for compensation and payment of his terminal dues.

3. The respondent refuted the claimant's claim and denied that its Director initiated an intention to frustrate the claimant to force him out of the company. The respondent further averred that the claimant's services were lawfully terminated. According to the respondent, the claimant was frequently warned about poor performance but did not make any efforts to improve. In his oral evidence, the claimant stated that the machine he was working from had a problem and he organized for maintenance with colleagues. He was later dismissed for not being at work. According to the claimant he was told by the respondent that the cameras did not pick him working. He denied he was sleeping at work. He further stated that he was not subjected to any disciplinary hearing.

4. In cross-examination, he denied receiving the letter of suspension dated 29<sup>th</sup> December, 2011 and notice to show cause dated 17<sup>th</sup> January, 2012. He however accepted that the letters were addressed to him. According to him, he only received one letter of complaint of 29<sup>th</sup> December, 2011. He further stated that as a supervisor he was in charge of printing works in the department and that anomalies in the department could lead to losses. He further conceded that he was expected to exercise diligence in his duties.

5. The respondent's witness Mr Stephen Mureithi Njeru stated that the claimant's performance was wanting for the period they worked together. There were verbal and written complaints about his work performance. The letter dated 29<sup>th</sup> December, 2011 was addressed to the claimant. It was about his poor performance. The letter of 17<sup>th</sup> January, 2012 was a show cause letter delivered to the claimant and he attempted to respond to it but his response was not satisfactory. The claimant was therefore warned. According to the witness, the claimant had a habit of going to sleep during working hours and this used to cause the respondent losses. Mr Njeru further stated that the claimant was paid all his dues upon termination.

6. In cross-examination, he stated that the meeting where the claimant was warned was not minuted. He further stated that if the meeting resolved issues there was no need for the show cause letter. The claimant herein was dismissed over accusations of poor work performance and sleeping during working hours. The respondent claimed the claimant had been suspended once and warned over this however, it is not quite clear that these warning letters were received by the claimant. The suspension letter had a portion of the claimants name and signature as acknowledgement of receipt. The same does not seem to have been signed for and acknowledged by the claimant.

7. The claimant denied receiving these letters. Further prior to the dismissal, there is no evidence on record to show the claimant was called for a disciplinary hearing where he was called upon to account for himself before dismissal. The termination letter informed the claimant that the management terminated his services with effect from 4<sup>th</sup> February, 2012 due to unsatisfactory performance. The letter did not list other accusations against the claimant yet there is nothing on record to show the claimant was confronted with these accusations and what his response was. The respondent's witness Mr Njeru told the court that the claimant responded to the show cause letter and his answers found not satisfactory yet no such response by the claimant was produced in evidence.

8. The respondent may have had a valid and justifiable reason to terminate the claimant's services however, the communication of such reasons and the manner of handling the separation process did not adhere to the requirements stipulated in the Employment Act. The court is therefore left with no choice but to declare the termination unfair and award the claimant ten months salary as compensation for unfair termination of services. That is to say Kshs 682,860/=. This will be in addition to terminal dues offered to the claimant in the letter of termination dated 4<sup>th</sup> February, 2012 if not paid already. The award shall be subject to statutory deductions. Interest on the award is at court rates from the date of judgement. The claimant shall further have costs of the suit.

9. It is so ordered.

**Dated at Nairobi this 21<sup>st</sup> day of September, 2018**

**Abuodha J. N.**

**Judge**

**Delivered at Nairobi this 21<sup>st</sup> day of September, 2018**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the Claimant

.....for the Respondent.