



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 10 OF 2016

(Before Hon. Justice Mathews N. Nduma)

JOEL OKOCHA OGILLO CLAIMANT

VERSUS

STRATOSTAFF E.A. LIMITED RESPONDENT

J U D G M E N T

1. The suit was brought vide a Memorandum of Claim on 20th January, 2016 seeking maximum compensation for unlawful termination of employment and payment of three (3) months salary in lieu of notice; two months house allowance; and Certificate of Service. The Claimant also seeks interest on the award and costs of the suit.

2. The Respondent filed a Statement of Response on 29th February, 2016 denying the claim in its entirety and prays the suit be dismissed with costs.

Facts of the Claim

3. The Claimant filed a witness statement dated 19th January, 2016 and testified under oath in support of the claim as filed. He relied on annexures attached to the statement of claim and marked '1' to '6'.

4. The Claimant was employed as a driver by the Respondent on 1st October, 2015 earning a monthly salary of Kshs.17,003.55. The employment was on a fixed one year contract. The Claimant however only worked for two months and was dismissed from employment following allegations of taking cash from a client in the sum of Kshs.1,500 on 23rd October, 2015, but only declared Kshs.1,000 the following day.

5. The Claimant was also accused of neglect of duty by failing to pick clients on time on 6th October, 2015. The Claimant was also accused of failing to pick telephone calls to pick clients.

6. The Claimant states that the termination was unlawful as it was without notice, notice to show cause or disciplinary hearing. He prays to be paid the full term of contract, one month notice pay, two months house allowance and provision of certificate of service.

Response

7. The Respondent called RW1, Amos Mwaura Wagendo who testified under oath in support of the defence. RW 1 worked in Nairobi for the Respondent as a site supervisor. In 2015 he worked in Nyanza and Western Region. He had not met the Claimant personally but they spoke occasionally on phone. RW1 was called by the Branch Manager Avis, Kisumu to whom the Respondent had seconded staff including the Claimant. The Claimant was stationed at Acasia, hotel Kisumu. The Manager put several complaints in writing against the Claimant. RW 1 discussed the matters with the Claimant and the Claimant admitted the offences orally and sought forgiveness in writing.

8. RW 1 organized a disciplinary hearing via teleconference the following day in which it emerged that the Claimant had issues of integrity including collecting Kshs.1,500 but only declared Kshs.1,000; had an accident but did not obtain a police abstract; he absconded duty and refused to receive calls when called upon to pick clients.

9. The Claimant defended himself. His explanation was not satisfactory and the Respondent decided to dismiss him from employment. He got a letter of dismissal with reasons dated 12th November 2015, produced before court.

10. The dismissal was in terms of section 44(4) (c) for neglect of duty and improper performance of duty. The Respondent prays the suit be

dismissed with costs.

Determination

11. The issues for determination are –

- (i) Whether the dismissal of the claimant was for a valid reason and in terms of a fair procedure.
- (ii) Whether the Claimant is entitled to the reliefs sought.

Issue 1

12. The Claimant was employed on a one year fixed contract. He only served two months. The contract provides for one month's termination or payment in lieu thereof. Upon a careful consideration of the evidence before court tendered by the Claimant and RW 1, the court is satisfied that the Respondent had a valid reason to dismiss the Claimant from employment. The court is also satisfied that the tele-conference disciplinary meeting satisfied the requirement of section 41 of the Employment Act, 2007. The Claimant was given opportunity to explain himself. He had been notified of the charges a day before the disciplinary hearing. The Claimant verbally admitted the offences and wrote a letter of apology.

13. The court is satisfied that the dismissal met the requirements under section 41, 43 and 45 of the Act. The claim for unlawful and unfair dismissal is dismissed. The Claimant is not entitled to compensation. However the summary dismissal is reduced to a normal termination considering that the Claimant admitted the neglect of duty and tendered written apology.

14. The court awards him one month's salary in lieu of notice and the Respondent is to provide the Claimant with a certificate of service.

15. The contract of service did not provide for payment of house allowance over and above the Kshs.17,003.55 payable per month and provision of a medical cover. The claim for house allowance for two months is dismissed.

16. Accordingly the court makes the following orders:-

- (a) Judgment is entered in favour of the Claimant as against the Respondent for Kshs.17,003.55 being one month salary in lieu of notice.
- (b) The Respondent to provide the Claimant with a Certificate of Service within 30 days of judgment.
- (c) The award in (a) above is payable with interest at court rates from date of filing suit till payment in full.
- (d) Each party to bear their own cost of the suit.

Dated and Signed in Kisumu this 20th day of September, 2018

Mathews N. Nduma

Judge

Appearances

Mr. Baganda for Claimant

M/s. Alunga for Respondent

Chrispo – Court Clerk