



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KISUMU

CAUSE NO. 282 OF 2015

(Before Hon. Lady Justice Maureen Onyango)

GEOFFREY SIRO MAINA.....CLAIMANT

VERSUS

CHEMARTIN TEA COMPANY LIMITED...RESPONDENT

JUDGMENT

By memorandum of claim dated 4th July and filed on 27th July 2015, the claimant avers the respondent unlawfully terminated his employment on 8th March 2015 and refused to pay his dues. He prays for the following remedies–

a) A declaration that the termination process as carried out by the respondent is unlawful and that during his employment with the respondent, he was not remunerated as required by law.

b) Payment of the sums of money claimed below –

1. 2 months' pay in lieu notice

Basic salary x 2 months

9,024.15 x 2 months Kshs.18,048.3

2. 16 days unpaid wages

16 x 10,377/30 days Kshs.5,534.4

3. Severance pay

30 days x 9,024 x 1 year/30 days Kshs.9,024

4. Compensation for unfair termination

Gross pay x 12 months

10,377 x 12 months Kshs.124,524

Total Kshs.157,130.7

c) Costs and Interests.

d) Any other relieve the court may deem fit to grant

The respondent filed a defence to the claim on 27th January 2016 denying the averments of the claimant in the memorandum of claim. The respondent avers that the claimant absconded duty on 18th March 2015 and that he was not terminated or dismissed. The respondent avers that the union reported a trade dispute under Section 65(1) of the Labour Relations Act and after hearing the parties, a decision was made in favour of the respondent on 15th June 2015. The respondent prays that the claim be dismissed.

The respondent counterclaimed as follows –

1. A declaration that the claimant has committed an act of gross-misconduct and the respondent be allowed to issue a letter of dismissal to the claimant on the following grounds -

- i) Failing to report to work as from 18th March 2015 to date.
- ii) Registering a trade dispute with the employer under the Labour Relations Act when non- exited.
- iii) Absconding duty from 18th March 2015 to date of filing of this claim.

At the hearing, the claimant testified that he was employed on 7th March 2013 as a Tea Picker. His salary depended on the quantity of tea picked and ranged between Kshs.5,000 and Kshs.12,000 per month. He was housed by the respondent. He worked from 6 am to 3 pm.

The claimant testified that his employment was terminated because he quarrelled with his wife. He testified that he was not issued with a letter of termination but was informed by the Manager.

He testified that he sought permission to go home and resolve the dispute with his wife but when he reported back with a letter from the Chief he was not allowed to resume duty. He reported to the union who wrote a letter to the respondent twice but there was no response. He testified that there was a discussion between the union and respondent, which he did not attend. He was then informed by the union to take his money and go home.

He testified that the matter was reported to Labour officer but he did not attend any meeting at the Labour Office and did not agree with the outcome of the meeting. He testified that he thereafter engaged an advocate who issued a demand letter to the respondent before filing suit.

For the respondent ALEX OCHOLA OMOLO, RW1 an Estate Manager of Chemartin Tea Estate, the respondent, testified that the claimant started working in January 2013 and left in March 2015 after deserting duty. He testified that the claimant was housed and at the Estate, there was a welfare committee whose members were known as Estate Elders. He testified that the respondent received a letter from the Elders, that the claimant had domestic issues with his wife and required time to go home to resolve the issues.

On 6th March 2015, he gave the claimant 3 days off being Friday, Saturday and Sunday. The claimant reported back to work with a letter from the Assistant Chief to the effect that he did not resolve the issues with the wife because the wife did not accompany him. The claimant was again given permission on 15th March 2015 but did not report back to work. The respondent did not hear from him until 25th April 2015 when they received a letter from the union reporting a dispute alleging that the claimant's employment had been terminated.

He testified that the Labour officer, Nandi Hills invited the parties for a meeting. Before going for the meeting at the Labour Office, RW1 held a meeting with the Branch Secretary, the Manager and Shop Steward where they all agreed that the claimant's employment had not been terminated and he was free to report back to work. Minutes of the meeting are at appendix 7 of the respondent's bundle. The respondent thereafter received a demand letter from the claimant's advocates, which the respondent responded to explaining that the claimant's employment had not been terminated and he should report back to work.

On 1st October 2014, there was a meeting at the Labour office where the agreement with the union to the effect that the claimant should report back to work was presented to the Labour Officer.

He testified that the Branch Secretary tried to contract the claimant to report back to work but the claimant refused.

Determination

I have considered the pleadings and the evidence on record, I have further considered the submissions filed by the parties. The issues for determination are whether the claimant's employment was terminated and if he is entitled to the remedies sought.

Whether the claimant was terminated

It is not in dispute that following domestic wrangles between the claimant and his wife the Estate Elders intervened and requested the respondent to give him permission to go home and reconcile with his wife. The permission was granted for 3 days from 6th to 8th March 2015. When the claimant reported to work on 9th March 2015, he reported that he required more time and was again granted permission on 15th March 2015 as requested in the Chief's letter that he submitted to the respondent.

According to the respondent, the claimant absconded duty after that while according to the claimant he reported back to work and was informed that his employment had been terminated.

It is not in dispute that thereafter a meeting was held between the respondent and the claimant's union on 16th June 2015 at which it was agreed that the claimant reports back to work.

It is further not in dispute that upon receiving a demand letter from the claimant's advocates dated 19th June 2015, the respondent replied by letter dated 22nd June 2015 to the effect that –

“We expect Maina to be on duty and should he fail to report in the next 7 days of this letter, we will consider him to have absconded himself from work according to Clause 24(a) of the CBA.”

It is further on record that after the Labour Officer held a meeting between the claimant's union and the respondent following a report of a trade dispute relating to the “*Unfair Termination of Geoffrey Maina Siro*” the Labour Officer reported back to the Chief Industrial Relations Officer as follows –

“MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES

ML/NDI/IR/C10/B1/2015(3)

COUNTY LABOUR OFFICE

NANDI COUNTY

P. O. Box 72

NANDI HILLS

1st October 2015

The Chief Industrial Relations Officer

Ministry of Labour, Social Security and Services

P. O. Box 40326 – 00100

NAIROBI (Att: Mrs. A. O. Tabu)

RE: TRADE DISPUTE-MLSS/LD/IR/11/39/2015

This is in reference to your letter dated 22nd May 2015 in which you appointed me to act as a Conciliator in the dispute that existed between Kenya Plantation and Agricultural Workers Union and M/s Chemartim Tea Estate Limited refers.

I understand the issue in dispute to be

“Unfair termination of Geoffrey Maina Siro”

Pursuant to section 68 of the Labour Relations Act 2007, I do hereby confirm that this dispute had been settled (see attached agreement for your necessary action).

Therefore you are advised to close your file.

SIGNED

C. I. OPALAKADI

CONCILIATOR

Cc The Secretary General

Kenya Plantation and Agricultural Workers Union

P.O. Box 1161

NAKURU

The Managing Director

Chemartin Tea Estate Limited

P.O. Box 48

NANDI HILLS

Conclusion

From the foregoing, it is manifest that the claimant's employment was not terminated. There was agreement with his union that he should resume work but he failed to do so.

For these reason the claim is dismissed.

DATED AND SIGNED AT NAIROBI ON THIS 8TH DAY OF OCTOBER 2018

MAUREEN ONYANGO

JUDGE

DATED AND DELIVERED AT KISUMU ON THIS 25th DAY OF OCTOBER 2018

MATHEWS NDERI NDUMA

JUDGE