



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NO 80 OF 2016

ISAAC RUTO KIPROTICHCLAIMANT

VERSUS

LIBYA OIL KENYA LIMITEDRESPONDENT

JUDGEMENT

1. The claimant pleaded among others that he was an employee of the respondent having been employed on 21st March, 2011 as an M & R Assistant and worked as such until 8th January, 2015 when he claimed his services were terminated unfairly. The claimant's exit salary was Kshs 90,939.50 per month.
2. The claimant denied the reasons given by the respondent for dismissing him which included neglect of duty. He further complained that the investigation that led to his dismissal were not transparent is one of the accountants left respondent's employment before the investigations were completed.
3. The respondent on the other hand pleaded that between January, 2012 and December, 2014 it lost an annual average of three million litres of products through fraudulent shipment from its Nairobi Terminal. During the period the claimant as the respondent's M & R Assistant, Assistant and later LPG supervisor based at the terminal, was responsible for accountabilities set out in his job description as per his contract of employment. These included daily tank dips and LPG cylinder counts, sample checks on filled cylinders.
4. According to the respondent the claimant was summarily dismissed for wilfully neglecting to perform his work and failing to follow written policies and procedure in the conduct of his job. According to the respondent, it commissioned an internal investigations following the loss of products and it was found that product was lost through fraudulent transaction shipping out product through collusion between respondent's staff and third parties.
5. By a letter dated 5th December, 2014 the claimant was invited to attend an investigating meeting on 8th December, 2014, the purpose of which was to gather facts and obtain information relevant to the investigation into the suspected fraudulent transfer of petroleum products from the respondents facility. According to the respondent the claimant was informed that the investigations were not disciplinary hearing and their purpose of the claimant.
6. Following the conclusion of the investigations the claimant was invited through a letter dated 9th December, 2014 to attend a disciplinary hearing on 16th December, 2014. The letter of invitation set out the allegations against the claimant with the letter was enclosed copies of relevant documents that the respondent intended to use at the disciplinary hearing and asked the claimant to provide details of documents he would wish to rely on at the hearing.
7. At the hearing the claimant gave his explanation which was considered by the panel before making the decision to summarily dismiss the claimant. During the hearing the claimant further stated that he did not participate in the allege fraud. He admitted being called for the investigatory and disciplinary hearing. He stated that he was interrogated but never given a chance to defend himself. It was his evidence that the stock movement record cleared him of any fraud.
8. In cross-examination he stated that he was a member of NSSF and a pension scheme. He further confirmed that the investigatory meeting was not a disciplinary meeting. He denied knowledge that the respondent lost products. He further admitted attending the disciplinary hearing where the charges were read to him and was informed that the minutes would be taken and he would be required to sign the minutes which he did. It is further his evidence that he signed for the termination letter and appealed against the termination.
9. The respondents witness Ms Irene Nyabuto informed the court that she was the respondent's HR Manager. According to her the claimant in his capacity as M & R Assistant and dispatch supervisor was to ensure that bulk tanks were inspected and safe to deliver. In cross-

examination she stated that new employees were inducted and that the claimant was inducted and signed for it. She further stated that the claimant used to generate loading orders and that gate passes were generated by the person who releases the trucks.

10. Termination of employment contract is at two levels. First there has to be a valid and justifiable reason for dismissal and second before carrying out the termination due process as provided under the Employment Act must be followed.

11. The claimant did not deny there were loses at the Nairobi Terminal where he was the M & R Assistant. His complaint seems to be that the investigations were rushed and that the investigation team already had a fixed mind about the investigation. He admits being called by the investigations team and subsequently the disciplinary team. He attended to both teams and offered his explanations. He further stated that he signed the minutes for the disciplinary hearing signifying they were a true record of what transpired.

12. The court has stated severally that it does not have an overarching role over management decisions. The role of the court is to ensure these decisions are taken as prescribed by the law, in this case the Employment Act and rules of natural justice. It is not for the court to over analyze the reason for dismissal. What the court needs to be satisfied about is that the reasons for which an employee was dismissed are reasonable and any reasonable employer put in the same position would have similarly dismissed the employee.

13. The court has considered the pleadings, the evidence and documents filed in support and opposition of the claim and is persuaded that there existed valid reasons for terminating the claimant's services and further that the process was carried out in accordance with the Employment Act.

14. The claim is therefore found without merit and is hereby dismissed with costs.

15. It is so ordered.

Dated at Nairobi this 5th day of October, 2018

Abuodha Jorum Nelson

Judge

Delivered this 5th day of October, 2018

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.