



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1729 OF 2014

(Before Hon. Justice Hellen S. Wasilwa on 4th October, 2018)

JOSEPH MULI NJAU..... CLAIMANT

VERSUS

POLYFLEX INDUSTRIES LIMITED.....RESPONDENT

JUDGEMENT

1. The Claimant herein filed his Memorandum of Claim on 6/10/2014 through the firm of Musyoki Mogaka & Company Advocates seeking damages for unfair dismissal and loss of earnings.

2. He stated in his evidence and pleadings that he was employed by the Respondent as an Assistant Slitter/Rewinder Machine Attendant in an oral contract with effect from August 2008.

3. On 28/8/2009, he was now confirmed into employment and given an annual contract. He avers that he performed his duties diligently until 27/3/2014 at about 5.40 pm when one Respondent's servant called Ajay Patel started hurling abuses at him alleging that he had left the machine he was operating for an inordinately long period. He explained that he had put the machine off to answer a call of nature.

4. The Production Manager Mr. Ajay took him to the Personnel Section and it was agreed he continues with his work. He continued with work upto 8 am. As he was leaving work, he was asked to go to Personnel Office again. The Personnel Officer wanted to hand over to him a letter to sign and he declined saying he could not sign what he had not read. He was kept waiting until 11 am. When he came back in the evening, he found a letter of dismissal had been written and was handed to him.

5. He avers that his salary was 12,000/= per month at the time but he was a member of NSSF and NHIF. He contends that he was never paid overtime nor the March 2014 salary.

6. The Respondent filed their Memorandum of Reply on 19.8.2016 through Wasena & Company Advocates. They admit employing Claimant as pleaded. They however aver that on the day of alleged incidence, the Claimant had left his machine unattended and when the Production Manager Mr. Ajay demanded an explanation, the Claimant answered him rudely and in an insulting manner.

7. The Claimant was then served with a warning letter, which he refused to sign for and opted to leave work on his own volition.

8. The RW1, the Human Resource Manager informed Court that the Claimant was cleared after he declined to accept a warning letter. He however intimated that he was not present when the events occurred.

9. The Parties herein filed their respective submissions. I have considered the evidence and submissions of both Parties. The issues for determination as follows:-

1. Whether there were valid reasons to dismiss the Claimant.

2. Whether due process was followed before Claimant's dismissal.

3. Whether the Claimant is entitled to prayers sought.

10. On the 1st issue, the Respondent aver that the Claimant refused to accept a warning letter and left on his own. I note that the events

occurred on 27/3/2014 and on 3.4.2014, the Claimant Counsel wrote a demand letter to the Respondents. The Respondents never responded to the said letter despite receipt of the same. The said letter indicate what happened at that time and which Respondent chose not to respond to.

11. The Respondent never served the Claimant with any dismissal letter nor any letter inviting him for any disciplinary hearing.

12. There is no reason why the Respondent failed to respond to the demand notice and call the Claimant through his Counsel for a disciplinary hearing. It therefore translates to the fact that the Claimant was dismissed without any valid reason and without due process.

13. It is my finding that the dismissal of the Claimant offends the law and in particular Section 45(2) of Employment Act which states as follows:-

(2) "A termination of employment by an employer is unfair if the employer fails to prove:

(a) that the reason for the termination is valid;

(b) that the reason for the termination is a fair reason:-

(i) related to the employee's conduct, capacity or compatibility; or

(ii) based on the operational requirements of the employer; and

(c) that the employment was terminated in accordance with fair procedure".

14 In terms of remedies I find for the Claimant and award him as follows:-

1. 1 months salary in lieu of notice = 12,751/=

2. Salary for March 2014 = 12,751/=

3. 8 months' salary as damages for unlawful dismissal = 8 x 12,751= 102,008/=

TOTAL = 127,510/=

4. The Respondent will pay costs of this suit and interest at Court rates with effect from the date of this judgement.

Dated and delivered in open Court this 4th day of October, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Opar holding brief for Wasuna for Respondent – Present

Claimant – Absent