

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE NO. 67 OF 2017

MAINA IRUNGU.....CLAIMANT

VERSUS

AAA GROWERS LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent that he was employed as a general labourer in September 2009 as a flower and seed bed maker till 28th May 2015 when he was called by the farm manager who summoned him and told him he was summarily dismissed. The Claimant averred that the entire period of service was served with diligence and efficiency without any disciplinary issues. The Claimant averred that he was not afforded any annual leave days from work nor was he paid any house allowance. He thus sought salary arrears including the unpaid leave and off days amounting to Kshs. 567,513/-, Kshs. 13,084/- being NSSF contributions not remitted and Kshs. 11,616/- as payment in lieu of notice. He also prayed for general damages of Kshs. 139,392/- for unlawful termination and Kshs. 304,451/- the equivalent of unpaid house allowances as well as costs of the suit and interest.

2. The Respondent filed a defence in which it was averred that it employees depending on whether the crops are in high season or low season and that the Claimant was engaged intermittently as a casual labourer depending on the season and whether he was available for work. The Respondent averred that the Claimant did not make himself available or offer the Respondent services after 25th May 2015 and as such was not dismissed by the Respondent but rather exercised his right not to avail himself or offer his services therefore no notice of termination was necessary. The Respondent averred that the manner of intermittent work did not entitle the Claimant to any annual leave days. It was averred that the Claimant's pay was consolidated as per the payslips and that remittances for NSSF were only made when the Claimant worked for the Respondent. The Respondent averred that claims arising in 2010 till 12th March 2014 are statute barred and that the Claimant was paid in accordance with the Regulations of Wages for Agricultural Industry where a minimum wage of Kshs. 203.85 to Kshs. 228/- per day in 2013 and 2015 respectively. The Respondent thus sought the dismissal of the claim with costs.

3. The Claimant testified that he was dismissed without pay and without a hearing. He stated that he was accused of urinating on the canteen and summarily dismissed. He was in the department mixing the fertilizer and surmised that his woes begun when he was proposed to be the point man for the union. He stated that his being falsely accused of urinating on the canteen was to ensure he was dismissed. He was cross-examined and stated that he was the chairman of the workers welfare and that he had been elected by the staff and that there were minutes to that effect though not before the court. He testified that NSSF dues were deducted but not remitted each month as shown by the statement. He stated that he was dismissed by Gabriel who accused him of urinating on the canteen.

4. The Respondent called Gabriel Kiai who testified that he was the farm manager of the Respondent and that the Claimant had been an employee of the Respondent working intermittently in Chester Farm as a casual labourer. He stated that the Respondent exports fresh vegetables, herbs and cut flowers to Europe, UK and the Middle East. He testified that the Claimant worked intermittently when work was available. He denied that the Claimant's employment was terminated. He was unaware of the accusations of urinating on the canteen. He testified that the Claimant did not work continuously from 2009 and that the Claimant ordinarily reported to work at 8.00am and worked till 4.00pm. He stated that the Claimant's dues were remitted alongside the dues of other staff through the Respondent's bank account at CFC Bank. He was cross-examined and testified that the company was a horticultural production company which is reputable and that it paid the Claimant the minimum wage as an agricultural worker. He stated that the Claimant worked intermittently as a general labourer and that he worked when he presented himself to the Respondent for work. He received an itemized consolidated wage. He stated that for the casual labourers there was no termination and that for the other staff they had well set procedures. In re-examination he stated that the payslips showed the Claimant worked for 14 days at times and that the NSSF remittance was for the days worked. The casuals were not terminated and were instead allowed to come and work when there is work available, they work then leave and that the Claimant left on his own volition.

5. No submissions were filed by the parties. The Claimant was from the testimony adduced an employee of the Respondent. He served intermittently from the record of his payments. The circumstance of his dismissal varies depending on who you ask. He asserts that he was dismissed by Gabriel yet Gabriel asserts that the Claimant was not dismissed and that he left of his own volition as he was a casual. The Claimant was a general labourer from what was produced in evidence. He applied fertilizer and prepared the seed beds for planting. He was unable to prove that the non-payment of NSSF dues was on account of the Respondent's default. He asserts that he did not go on leave but did not avail any records of the requests for leave that were denied. He was only able to prove that he worked for the Respondent and that he ceased working for the Respondent sometime in May 2015. He was the staff welfare chairman of the Respondent disproving the claim by the Respondent that he was a casual labourer. If a casual labourer can be placed in charge of the staff welfare given the intermittent nature of the work by casual labourers it is hard to imagine the Respondent as a reputable company in the export market as touted by the Respondent's witness Gabriel. The employees such as the Claimant are casual by name only but work for years and years. The minutes of the casual staff welfare meeting held on 6th June 2013 evidenced some lapses the Respondent was to remedy and these were in regard to items such as payslips. Casuals do not get payslips as they are paid at the end of the day and in cash. The Claimant was therefore entitled to procedural safeguards before the dismissal he faced. He was not accorded a hearing before dismissal and therefore entitled to recover for the infarction.

6. The Claimant proved the claim on a balance of probabilities. In the final result I will enter judgment for the Claimant against the Respondent as follows:-

- a. One month salary in lieu of notice Kshs. 11,616/-
- b. 6 months salary as compensation Kshs. 69,696/-
- c. Interest on the sums above at court rates from date of judgment till payment in full.
- d. Costs of the suit.

It is so ordered.

Dated and delivered at Nyeri this 13th day of November 2018

Nzioki wa Makau

JUDGE