



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1487 OF 2010

KENYA SCIENTIFIC RESEARCH INTERNATIONAL TECHNICAL &

ALLIED INSTITUTION WORKERS.....CLAIMANT

VERSUS

MR. LESLEY BARNES DILPACK LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. The claimant union brought this suit on behalf of Ebby Oside Mukanya and Everlyne Jahenda Chogo (herein after called grievants) claim the following:

(a) THAT the respondent to pay the grievants their salary for the period they have been out of employment to date.

(b) THAT the respondent to pay the grievants the final dues which include; Days worked, Notice Pay, Accrued leave, House allowance arrears, Severance pay and 12 month compensation for loss of employment a sum totalling to Kshs.810,689 (Kenya Shillings Eight Hundred Ten thousand Six Hundred and Eight Nine) refer Appendix VI.

(c) THAT the respondent to pay the grievants severance pay and full compensation as the respondents failed to follow the proper procedure in terminating their services.

(d) THAT the respondents to pay the costs of this suit.

2. The respondents filed defence admitting employment relationship with the grievants but denied having any recognition agreement with the claimant union. They further averred that they did not even know that the grievants were members of any union. They however admitted that they dismissed the grievants from employment due to gross misconduct and not on account of redundancy as pleaded by the claimant. They further averred that after the dismissal the claimant union lodged a dispute at the labour office and she paid the grievants all their dues as recommended by the conciliator including compensation although the grievants failed to sign certificate of settlement. They therefore prayed for the suit to be dismissed with costs.

3. The suit was heard on 28.11.2018 when the grievants testified but the respondents never called any witnesses. Despite leave being given to the parties to file submissions, they never filed within the time given.

Claimant's Case

4. Ebby Oside Mukanya testified as Cw1. She stated that she was employed by the respondents as Quality Controller on 1.4.2006 and worked until 6.3.2010 when she was dismissed summarily on allegation that she was inciting other workers to disrespect Management. She was paid one month salary in lieu of notice plus salary for the 6 days worked in March 2010. As at the time of the dismissal, she was earning Kshs.16,500 per month.

5. Cw1 further testified that she was not served with any warning letter or notice before the dismissal. She prayed for the dues sought in the claim contending that she was erroneously terminated because she had not done any mistake and she was not accorded any hearing.

6. On cross examination, she admitted receipt of Kshs.24,047 through Labour Officer. She further admitted that by the letter dated 30.8.2010, the conciliator recommended that she be paid one month salary as compensation for unfair termination. She further admitted receipts of cheque for Kshs.15,206.00 plus a certificate of service. She maintained that the said payment was only compensation for unfair termination but he was not paid the other dues.

7. Everlyne Jahenda Chogo testified as Cw2. She stated that she was employed by the respondent on 2.6.2008 as Quality Controller and worked until 6.3.2010 when she was summarily dismissed on allegation that she was inciting other workers. As at that time she was earning Kshs.17,500 per month.

8. She testified that after termination she was paid salary for 6 days worked plus one month salary in lieu of notice. She contended that prior to the dismissal she had no disciplinary issues with the employer she further contended that after the dismissal she reported the dispute and it was taken to a conciliator after which she was only given a certificate of service.

9. On cross examination she admitted receipt of Kshs.17,058.75 on 20.4.2010 at the labour office. She also admitted receipt of Kshs.16,058 plus certificate of service. She however maintained that the dues sought during the conciliation were not all settled.

Analysis and determination

10. There is no dispute that the grievants were employed by the respondents until 6.3.2010 when they were dismissed summarily. There is also no dispute that after the dismissal, the grievants reported a dispute at the labour office and a conciliation was done. There is further no dispute that the conciliator made recommendation to the parties towards resolving the dispute. The issues for determination herein are:-

- a) Whether the dispute was fully resolved through conciliation;
- b) Whether the grievants were unfairly dismissed;
- c) Whether the grievants are entitled to the reliefs sought.

Conciliation process

11. There is no dispute that the parties referred this matter for conciliation and after the hearing the conciliator made his report on 30.8.2010 recommending that the employer pays the grievants one month salary in lieu of notice, pro rata leave, days worked and compensation by one month salary.

12. The grievants admitted under oath that they were paid salary for the 6 days worked before termination, one month salary in lieu of notice and one month salary compensation for unfair termination. Each grievant was given two cheques. The first was paid through the Labour Officer Industrial Area and it was for notice, pro rata leave and 6 days salary according to the conciliators report. The second cheque was for compensation and it was paid through Nyayo House Labour Office.

13. The conciliator never awarded the other claims namely House Allowance and severance pay for reasons. First, he found that the grievants salary was consolidated and it was not underpaid. Second, the claim for severance pay was dismissed because the termination was not on account of redundancy.

14. The claimant admitted receipt of the payment cheques although they declined to sign the certificate of settlement. In my view, the refusal to sign the certificate of settlement did not change anything. The fact remains that the grievants accepted the proceeds from the conciliation process and the recommendation by the conciliator. In their evidence, the grievants alleged that all their claims were not resolved through conciliation.

15. I have already stated that two claims, House allowance and severance pay were correctly disallowed by the conciliator and as such it is my considered view that the dispute herein was resolved through the conciliator under section 49 of the Employment Act and the parties accepted the recommendation by the conciliator. The Employer deposited the dues at the Labour officer and the claimants collected it voluntarily. There is therefore no further proceedings to be entertained.

16. For the foregoing reason I see no need of dealing with the question of unfair termination and the reliefs sought. The reason for the foregoing finding is that the conciliator resolved the issue of unfair termination and the claimant accepted the compensation recommended.

Conclusion and Disposition

17. I have found that the dispute herein was resolved through conciliation and the parties accepted the conciliator recommendation. This suit is therefore without merits and it is dismissed. Each party to bear his/her own costs.

Dated, Signed and Delivered in Open Court at Nairobi this 14th day of December, 2018

ONESMUS N. MAKAU

JUDGE