



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 2207 OF 2014
PETER NGARI KARIUKI.....CLAIMANT
v
RIFT VALLEY RAILWAYS (K) LTD.....RESPONDENT

JUDGMENT

1. For determination are the questions

(i) *Whether the dismissal of Peter Ngari Kariuki (Claimant) was unfair*

(ii) *Whether the Claimant was paid wages for November 2014 and*

(iii) *Appropriate remedies.*

2. When this Cause first came up for hearing on 10 May 2018, the hearing aborted because the Respondent's advocate Mr. Cheluget sought an adjournment on the ground that the advocates on record for the Respondent had attempted to file an application to cease from acting but the registry had declined to accept the application.

3. The Court caused the Deputy Registrar to investigate the allegations and the investigations established the allegations were baseless.

4. The Cause was eventually heard on 18 October 2018 when the Claimant testified and closed his case.

5. The Respondent closed its case without calling any witnesses, or leading evidence on 24 October 2014.

6. The Claimant filed his submissions on 31 October 2018 while the Respondent's submissions which should have been filed by 17 November 2018 were not on the file by this morning.

7. The Court has considered the pleadings, evidence and submissions on record.

Unfair termination of employment

Procedural fairness

8. Section 35 of the Employment Act, 2007 requires *written notice of termination* while section 41 of the same Act envisages a hearing.

9. The Claimant was issued with a show cause notice on 23 September 2014 to which he responded on the same day.

10. After the show cause and response, the Claimant appeared before a Disciplinary Committee on 24 September 2014. Minutes of the hearing were filed in Court.

11. The Court is satisfied that the process as conducted by the Respondent met the statutory test as contemplated by sections 35 and 41 of the Employment Act, 2007.

Substantive fairness

30. Claimant to have costs.

Delivered, dated and signed in Nairobi on this 7th day of December 2018.

Radido Stephen

Judge

Appearances

For Claimant Mr. Kirika instructed by D.K. Githinji & Co. Advocates

For Respondent Mr. Cheluget instructed by Ochieng, Onyango, Kibet & Ohaga Advocates

Court Assistant Lindsey