



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CIVIL SUIT NO. 141 OF 2015

(Before Hon. Justice Mathews N. Nduma)

JOSHUA ONYANGO OKOTH.....CLAIMANT

VERSUS

SONY SUGAR COMPANY LIMITED.....RESPONDENT

JUDGMENT

1. The suit was brought by a Statement of Claim of 29th April, 2015 the Claimant seeks compensation for unlawful and unfair termination of employment and payment of terminal benefits set out in paragraph 11 of the Memorandum of Claim.
2. The Respondent filed a Memorandum of Reply to the Statement of Claim on 16th June, 2015 in which the claim was partly admitted.
3. A consent by M/s Okello Stephen & Co. Advocates and M/s. Otieno Ragot & co. Advocates was filed by the parties on 14th December, 2016 and the same was adopted as an order of the court.
4. In terms of the consent all the claims for payment of terminal benefits were settled leaving only the claim for a declaration that the termination of the employment was unlawful and unfair and an award of damages in respect thereof. The matter then proceeded, by way of written submissions on the pending issue, reliance being placed on the pleadings, list of documents filed and witness statements filed by the parties.
5. In his statement filed on 7th September, 2017, the Claimant states that he was employed by the Respondent as a general labourer on 4th March, 1980. He was subsequently confirmed as a permanent employee and served as an operator, fitter helper, fitter and senior fitter. He also acted as a supervisor in Grade SM 3 from 18th June, 2007.
6. On 3rd February, 2012 the Claimant was arrested by the Security Guards and taken to the police on 4th February, 2012 on allegation of theft of welding rods, bolts and nuts found in the side pocket of his dust coat. The Claimant states he was assaulted by the guards and was locked up at the premises for a day before he was taken to the police. That his explanation that he was in the process of supervising repair of Rotary Screen Gear Box foundation was not heeded. That repairs were on going at the time and had gone to the gate to collect a newspaper when a search was conducted on his person.
7. The police conducted investigations and found the Claimant not culpable and released him. The Claimant returned to work on 8th February, 2012 but was interdicted and given a show cause letter on charges of misappropriation of company property, dishonesty and lack of integrity. He was called to a disciplinary hearing on 16th and 18th April, 2012. On 30th April, 2012, the Claimant received a letter of termination. The explanation by the Claimant was found wanting. The Claimant prays that the court declare that the termination was not for a valid reason and he be compensated for the termination.
8. The Respondent relies on a witness statement of Duncan O. Ouma, an employee of the Respondent and a member of the disciplinary committee that conducted the hearing on 16th and 18th April, 2012.
9. RW 1 states that the Claimant was caught with stolen goods protruding from his side pockets. That at the time, the Claimant had completed his shift, and was at the gate awaiting his newspaper when a security guard noticed the items and conducted a search on the Claimant. That two watchmen testified at the disciplinary hearing. That the Claimant made a weak explanation why he was in possession of company property, while on his way home. That a third witness had also testified that the Claimant had made requisition of those items earlier in the day on pretext that he needed the items to repair the machinery.
10. The Claimant did not call any witness at the disciplinary hearing to support his version of events. The Claimant was also represented by

a union representative at the disciplinary hearing.

11. The committee found the explanation by the Claimant unsatisfactory and made a decision to terminate his services. The Respondent prays the court to dismiss the claim with costs.

Determination

12. The issue to determination is whether the Claimant's employment was terminated for a valid reason and in terms of a fair procedure. Upon a careful analysis of the evidence by the Claimant vis a vis the evidence adduced by the Respondent, the court is satisfied that the Claimant was caught with company property at the gate, whilst he was knocking off from work after the day shift. That the Claimant was subjected to a proper disciplinary hearing. That the Respondent found the explanation by the Claimant not satisfactory and lawfully terminated his services.

13. The court notes that the Respondent has conceded to the claim for payment of terminal benefits which is a magnanimous gesture by the Respondent.

14. Accordingly, the court finds that the employment of the Claimant was terminated for a valid reason and a fair procedure was followed in the conduct of the disciplinary hearing that culminated in his termination.

15. The Respondent did not violate sections 41, 43 and 45 of the Employment Act, 2007. The claim for unlawful termination has no merit and the same is dismissed. Each party to bear their own costs of the suit since the case was largely resolved via compromise.

Judgment Dated, Signed and delivered this 6th day of December, 2018

Mathews N. Nduma

Judge

Appearances

Mr. Okello for Claimant

M/s. Onyango for Respondent

Chrispo – Court Clerk