



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NUMBER 1774 OF 2013

DAVID KANYINGI NJAGI.....CLAIMANT

VERSUS

PARETTO PRINTING WORKS LTD.....RESPONDENT

JUDGEMENT

1. The claimant pleaded that he was on 2nd January, 2010 employed by the respondent as a Machine Operator at a salary of 17,400 per month. He worked until 12th October, 2012 when according to him his services were terminated without any reason and the respondent refused to pay him his terminal dues amounting to Kshs 74,785 particulars of which are given in the statement of claim.

2. The respondent on its part denied the claimant was dismissed without any reason. According to the respondent, the claimant was summarily dismissed on 12th October, 2012 after being found in possession of adhesive printing material stolen from the respondent. According to the respondent, the claimant admitted to having stolen the said materials and requested that no criminal proceedings be instituted against him and in return he would lodge no claim against the respondent upon dismissal.

3. The respondent denied the claimant was entitled to the claims made in his memorandum of claim. In his oral testimony in court the claimant stated that on the material date at about 4:30 p.m. he was operating a machine when he heard his boss call him when he looked, he saw his boss holding some pieces of paper and asked if he knew about them. He told his boss they were off-cuts. He then resumed work until 6:45 p.m.

4.. The next day he reported to work and worked until 10:00 a.m. when his supervisor came and told him to remove his work uniform and go to the reception and wait for his boss. His boss came and told him in the presence of his supervisor that his services had been terminated. He reported the issue to the Ministry of Labour and was issued with a letter in which the respondent was asked to respond within 7 days. Upon termination he was not paid his terminal dues.

5. In cross-examination he stated that he had worked for three years at the time of his termination. He denied leaving any papers with the security. He denied that there was any meeting where he accepted taking the adhesive tapes.

6. The respondents witness Mr Simon Nguyai informed the court that on the material date the claimant's boss stepped out and found some papers left at the security house and when he asked whose they were the guard told him they belonged to the claimant and he had told the guard they were off-cuts. According to

him the claimant was called to the presence of five of them and he admitted that the papers were his. His boss therefore decided to dismiss the claimant.

7. The court takes the view that there could have existed valid reasons for dismissing the claimant however, the process that was followed was rushed and never complied with the requirements of the Employment Act which requires that prior to dismissing an employee for a valid and or justifiable reason such an employee must be afforded a hearing to defend himself.

8. The claimant is accused of having deposited some paper material at the guard house claiming them to be off-cuts however, no such guard recorded a statement or was called to give evidence that indeed it was the claimant who left the items there. The respondent's witness did not witness first hand, the incident but was informed by his boss. The boss, having been the one who found the alleged stolen items was never called to give evidence nor any reason offered why he could not be called. In the circumstances the court finds and holds that the respondent failed to prove to the required standards the reason for dismissing the claimant and further that the process of dismissal contravened the provisions of the Employment Act.

9. The court therefore enters judgement against the respondent as follows:

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|---|----------------|
| a. One month's salary in lieu of notice | 17,400 |
| b. 47.75 days of leave | 31,955 |
| c. 12 days worked in October | 8,030 |
| d. Four months salary compensation for unfair dismissal | <u>69,600</u> |
| e. Costs of the suit. | <u>126,985</u> |

8. It is so ordered.

Dated at Nairobi this 17th day of February, 2017

Abuodha J. N.

Judge

Delivered this 17th day of February, 2017

In the presence of:-

In person Claimant and

Maina for the Respondent.

Abuodha J. N.

Judge