



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NUMBER 503 OF 2015

JAMES NJENGA WACUKA.....CLAIMANT

VERSUS

DPL FESTIVE BAKERY LTD.....RESPONDENT

JUDGEMENT

1. The claimant herein averred that he was employed by the respondent from September 2006 to 7th July, 2014 at a starting daily wage of Kshs 263/= which was reviewed upwards to Kshs 20,000/= per month by the time he was dismissed. According to him he served the respondent diligently for eight years without any adverse disciplinary record.

2. On 2nd July, 2014 the claimant reported to work but was denied entry into the respondent's premises. He was later informed by his colleagues that he was denied entry because he and some of his colleagues were accused of stealing property belonging to the respondent. On 24th July, 2014, the Human Resource Manager, the Dispatch manager one Mr Sandeep and Production Manager Mr Rakesh held a meeting with the claimant and his colleagues at which he was accused jointly with others of stealing the respondent's property for the past six months. He sought evidence in support of the allegations against him but none was produced. The claimant therefore contended that the respondent's action of terminating his services was not based on any justifiable grounds. The claimant therefore sought from the court an order to be paid his terminal dues as well as compensation for unfair dismissal.

3. The respondent on its part averred that the claimant was in 2009 initially engaged as a casual worker but later confirmed as a Dispatch clerk on permanent basis earning a salary of Kshs 13,041 and a house allowance of 2,347. According to the respondent on 11th July 2014 it received information that the claimant had recorded some goods in order sheet for both godown A and B for some festive brown bread brands to be issued to Park Road route but only one order appeared on the delivery sheet.

4. The claimant was subsequently called before the legal and administration department where he recorded a statement and signed and thumb printed. According to the respondent the claimant in his statement was determined to evade all responsibility over the fraudulent missing orders. Investigations were therefore expanded and claimant's colleagues asked to record statements after which they were required to appear before a disciplinary panel scheduled for 16th July, 2014. The claimant was notified that he could be accompanied by a colleague to the hearing.

5. According to the respondent, the claimant attended the disciplinary hearing where he admitted that he was the one responsible for raising all orders for Lunga Lunga and Enterprise Branch but said he had

forgotten to record the order for godown A in the delivery book. The respondent was however shocked since the anomaly had persisted for six months. The respondent consequently issued the claimant with a summary dismissal letter detailing the reasons for dismissal and informed the claimant of his terminal entitlements.

6. Termination of employment or dismissal is a normal occurrence in employment relationship. The court only interferes if the dismissal or termination is carried out contrary to the Employment Act and in breach of the parties labour rights protected under the constitution and or international law.

7. It is common ground that the claimant was accused of fraudulent practice in the course of his duties. He does not deny that these accusations were brought to his knowledge. He further does not deny that he was subjected to a disciplinary hearing before dismissal. The claimant only disputes that he was responsible for the fraud and stated he forgot to document the deliveries in question. The respondent however did not believe him as the anomaly had gone on for six months.

8. The court has reviewed and considered both parties pleadings as well as supporting documents. The respondent has endeavored to document as much as possible this in its defence as well as the steps it took in handling this dispute. The court is persuaded that there existed a valid reason for terminating the claimant's services and that the respondent followed a fair procedure in terminating the claimant's services. It is therefore the courts' view that the respondent has satisfactorily discharged its evidentiary burden and hereby finds the claim without merit and hereby dismiss the same with costs.

9. 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:-

Mr Simiyu for Manyara for the Claimant and

No appearance for the Respondent.

Abuodha J. N.

Judge