



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA
AT NAIROBI
CAUSE NUMBER 633 OF 2010

MORRIS NYAVANGA KELLUM.....CLAIMANT

VERSUS

FAIRVIEW HOTEL LIMITED.....1ST RESPONDENT

DANIEL SZLAPAK.....2ND RESPONDENT

MARK ABBEMA.....3RD RESPONDENT

E. ABBEMA.....4TH RESPONDENT

JUDGEMENT

1. The claimant averred that he was employed by the 1st respondent on 27th October, 1999 as a room steward on contract basis. Sometimes in July, 2008 he was transferred as a general house cleaner to one of the respondent's Director's house (2nd respondent) where according to him he carried out his duties diligently.

2. On 1st March, 2010 the 2nd respondent called him alleging that he (the claimant) had stolen the 2nd respondent's money and through the 1st respondent's head of security he was intimidated to admit the theft but he refused. He was subsequently threatened with the termination of his services but he still refused to admit the theft. The 2nd respondent called the police who were already at the premises and the claimant's person was searched and no money was found. He was thereafter taken to another room where according to him he was forced to record a statement admitting liability.

3. He was thereafter in the company of two police officers driven in a taxi to Capital Hill Police post from where he was later released and asked to report later as the police had launched investigations. On 6th March, 2010 the 1st respondent issued the claimant with a summary dismissal letter. The claimant denied the reasons for his dismissal and sought that the court declares the dismissal unlawful and order that the respondents compensate him.

4. The respondent on the other hand averred that the 2nd respondent having suspected that one of the employees working in his house was stealing money laid a trap to find the thief and called the police to witness what unfolded. According to the 2nd respondent he left currency notes which had been treated with chemical that would reflect under ultra violet light and anyone who touched the money would have the chemical reflect under light.

5. The 2nd respondent also photocopied the notes that were used in the trap. When the treated notes went missing, the 2nd respondent in the presence of the security officer the two police officers called the employees who were working in his house, including the claimant to a room whereupon their hands were examined for traces of the chemical that was applied to the missing notes under light. According to the respondent, the claimant was found with substantial traces of the chemical that had been placed on the notes.

6. The claimant consequently admitted that he had in fact been stealing from the 2nd respondent and had stolen up to Kshs 70,000/=. The oral evidence tendered in court by both parties repeated the foregoing averments hence there would be no need to summarize them again.

7. A careful analysis of the events leading to the claimant's dismissal present themselves as a well thought out attempt by the respondent to catch a thief. His idea of laying a trap with treated money may have been very perfect however the court did not find the preparatory process credible because there was no evidence on who treated the money and where it was done, was every caution taken that the chemical would have spilled elsewhere apart from the trap currency so that no person could accidentally come into contact with it.

8. On the other hand assuming it be true that every caution was taken in handling the chemical and it could only be found on the treated currency, then there was sufficient evidence to dismiss the claimant when traces of the chemical similar to the ones on the treated currency were found in his hands. However, the law concerning termination of employment require that one, there is in existence of valid or justifiable reason for dismissal or termination, an employee must be taken through a disciplinary process where he or she must be given a chance to defend himself or herself.

9. The fact that the evidence or reason for dismissal is overwhelming is not reason enough to overlook the procedure for dismissal or termination provided for in the statute. The court has not seen or come across any evidence either in the pleadings or oral evidence that the claimant on being "caught" was taken through a disciplinary hearing or something similar before being summarily dismissed.

10. The court in the circumstances finds the dismissal unfair and enters judgment against the respondent as follows:

a. One months' salary in lieu of notice	8,000
b. Service pay at the rate of 15 days pay for each year of completed service (Kshs 4000 x 9 yrs)	36,000
c. Six months salary as compensation for unfair dismissal	<u>48,000</u>
	<u>92,000</u>
d. Costs of the suit	

9. It is so ordered.

Dated at Nairobi this 10th day of February 2017

Abuodha J. N.

Judge

Delivered this 10th day of February 2017

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge