



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 530 OF 2015
WILBERFORCE GEORGE ACHOKACLAIMANT
VERSUS
KALU WORKS LIMITED.....RESPONDENT

JUDGMENT

1. The claimant pleaded that he was employed by the respondent initially as a setter/packer at a salary of Kshs 8,320/= per month. He rose to the rank of Machine Operator and at the time of termination he was earning Kshs 32,495/= per month.
2. His services were terminated on account of being non-productive, bad team worker and general behavior. Further his dues were calculated by the respondent and paid. According to the claimant this amount was received without prejudice because in his view the termination was unfair and he was not satisfied with the payment.
3. The respondent admitted that the claimant's employment was terminated but denied the termination was unfair. According to the respondent, it explained to the claimant the reasons for the termination in presence of the chief shop steward of his union. Further, upon termination, a meeting was held between the claimant's union and the respondent at which it was agreed that the claimant be paid all his terminal dues in line with the prevailing Collective Bargaining Agreement. The respondent further pleaded that prior to the termination it received several complaints regarding the claimant's general conduct and performance of duties.
4. At the trial the claimant further stated that he never received any warning letter prior to the dismissal and that no show cause letter was issued to him. He further denied recovering his terminal dues and that there was any disciplinary hearing prior to his dismissal.
5. In cross examination, he stated that he read the letter and understood the reasons for dismissal. He did not agree with the reasons. He further stated that he reported the dismissal to the union, a meeting was called and discussion held. However according to the claimant the discussions at the meeting were at variance with the reason for the dismissal. He further conceded that he was paid after the meeting with his union and that he agreed with the deductions on his terminal benefits. According to him he only disputed the calculation of his dues and the manner of termination.
6. The respondent's witness Mr Mutisya informed the court that the claimant had been issued with warning letters before. In 2007 he received a warning letter concerning strike and that the claimant had several money claims against him from colleagues and spent considerable time trying to sort them out.

Mr Mutisya further testified that a copy of the termination letter was given to the union and the Chief Shop Steward. The management met with the union over the termination and it was agreed that the termination stays but the claimant be paid his terminal dues as per the Collective Bargaining Agreement.

7. In cross-examination he stated that the warning letters were not valid by the time the claimant was dismissed. He further stated that there was no disciplinary hearing prior to dismissal but a meeting was held with the claimant's union after the dismissal at which the issue was discussed.

8. The claimant stated that he only disputed the manner of termination of his services and the amount paid to him upon termination. Section 41(1) of the Employment Act requires that prior to the termination of employment on grounds of misconduct, poor performance or physical incapacity, an employer must explain to the employee in a language such employee understands, the reason for which dismissal or termination is being considered.

9. This is to ensure such an employee is afforded an opportunity to defend him or herself from the accusations for which the dismissal or termination is being considered. It is imperative that the hearing takes place before the termination or dismissal is done.

10. The court has reviewed the evidence and documents filed in support of either parties' respective positions and is of the view that there existed valid and justifiable reason for terminating the claimant's services. The court is further persuaded that the joint calculation of the claimant's terminal dues was in accordance with the law and his contract service. The claimant cannot therefore review the claim again.

11. The court will however order the respondent to pay the claimant a further sum of Kshs 136,225/= being five months salary on account of termination prior to taking the claimant through a disciplinary hearing

12. The claimant shall further have costs of the suit.

It is so ordered.

Dated at Nairobi 3rd day of February 2017

Abuodha Jorum Nelson

Judge

Delivered this 3rd day of February 2017

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant

.....for the Respondent

Abuodha Jorum Nelson

Judge