



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 2241 OF 2016

NAHASHON IKOU MUNYI.....CLAIMANT

VERSUS

G4S KENYA LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. The Claimant's claim brought by a Memorandum of Claim dated 16th December 2014 and filed in Court on 17th December 2014 is for unlawful dismissal and failure to pay terminal dues. The Respondent filed a Statement of Response on 28th March 2015 to which the Claimant responded on 19th June 2015.

2. At the hearing the Claimant testified on his own behalf and the Respondent called its Human Resource Manager, Boniface Ngungu Ndwota. Both parties filed written submissions.

The Claimant's Case

3. The Claimant was employed by the Respondent as a driver on 31st July 2000. On 23rd October 2013 while driving the Respondent's Motor Vehicle Registration Number KBN 986G along Harambee Avenue in Nairobi, the Claimant was involved in a road traffic accident with a third party Motor Vehicle Registration Number KBJ 641E.

4. The Claimant offered to pay for the damage caused to the third party Motor Vehicle but his employment was terminated on 13th November 2013.

5. It is the Claimant's case that the termination of his employment was neither justifiable nor fair. He now claims the following:

- a. One month's salary in lieu of notice.....Kshs. 11,750
- b. Service pay.....63,635
- c. Compensation for unfair termination.....138,840
- d. Unremitted NSSF dues.....4,000
- e. Costs plus interest

The Respondent's Case

6. In its Statement of Response filed on 28th May 2015, the Respondent states that the Claimant was employed from 1st January 2001 until 5th November 2013 when he was dismissed. The Claimant earned a basic salary of Kshs. 17,602, a house allowance of Kshs. 2,640, a responsibility allowance of Kshs. 250 and a soap allowance of Kshs. 50.

7. At the time of dismissal, the Claimant was engaged as a driver in the Respondent's Courier Division where his duties entailed collection and delivery of customers' parcels. The Respondent states that on 23rd October 2013 while driving Motor Vehicle Registration Number KBN 986G, the Claimant failed to adhere to Company Policy and Traffic Regulations particulars being:

- a. Driving recklessly and negligently and as a result hitting a third party motor vehicle along Harambee Avenue in Nairobi;
- b. Being rude to other road users contrary to the Respondent's Regulations;
- c. Failing to report the accident to the Police as required by law;
- d. Failing to report the accident to his Supervisor contrary to Employment Regulations;
- e. Admitting liability for the accident without the knowledge and authorization of the Respondent's management;

8. As a result of the Claimant's actions, the third party driver reported the incident to the Police as a hit and run accident and the Respondent was summoned to the Central Police Station in Nairobi.

9. On 24th October 2013, the Respondent's Fleet Manager accompanied the Claimant to Central Police Station where they met the driver of the third party motor vehicle who demanded to be paid Kshs. 10,000 being the cost of repair of the damage caused to his vehicle.

10. On 25th October 2013, the Claimant was suspended from work and given notice of a disciplinary hearing scheduled for 31st October 2013. At the disciplinary hearing, the Claimant made oral representations which were considered and found unsatisfactory. The Claimant was finally dismissed on 5th November 2013. It is the Respondent's case that the dismissal was lawful and fair.

Findings and Determination

11. There are two (2) issues for determination in this case:

- a. Whether the Claimant's dismissal was lawful and fair;
- b. Whether the Claimant is entitled to the remedies sought.

The Dismissal

12. The Claimant was dismissed by letter dated 13th November 2013 stating as follows:

“Dear Nahashon,

RE: SUMMARY DISMISSAL

We make reference to the disciplinary hearing held on 31st October 2013. It was established that while assigned duties as Courier driver, you performed your duties negligently on 23rd October

2013 by:

- *Failing to observe traffic regulations as required leading to a road accident*
- *Causing an accident and failing to report it to your supervisor*

- *Being rude to other road users and driving company vehicle recklessly putting the company image at (sic) disrepute. The above actions amount to gross misconduct. You are therefore dismissed from the services of the company with immediate effect from the date of this letter as per section 44 of the employment act 2007.*

You are required to hand in all the company property in your possession to enable us pay your dues.

You will be paid as follows:

- *Days worked plus overtime if any up to 12th November 2013*
- *House allowance for the days worked*
- *Leave earned but not taken*

From this payment, the company shall deduct statutory deductions, any loans owed to the company and cost of lost company property in your possession, if any.

You have the right of appeal within 14 days.

Yours sincerely,

(Signed)

Boniface N. Ngungu

Employee Relations Coordinator”

13. From this letter and other evidence adduced before the Court, the Claimant was summarily dismissed for careless driving which caused damage to a third party motor vehicle. The Claimant was also accused of failure to report the accident as required.

14. While admitting that an accident had occurred, the Claimant denied the specific charges of careless driving and failure to report the accident. The Court however noted that in the payment agreement signed by the Claimant and the third party driver, the Claimant stated that he “*was trying to cut in to get back into the lane*” when the accident occurred. The Court took this to mean that the Claimant was overlapping, which is a recognisable traffic offence. The Claimant further states that he had been blamed for the accident, a verdict he did not challenge.

15. On the question whether the Claimant reported the accident, the parties took divergent positions. Nevertheless, it was the responsibility of the Claimant to obtain a police abstract to confirm that the accident had indeed been reported. He failed to discharge this responsibility and the Court must agree with the Respondent that the accident was not reported. The Claimant, being an experienced driver of many years was expected to be familiar with post-accident procedures which he failed to follow.

16. From the foregoing, the Court finds that the Respondent had a valid reason for dismissing the Claimant as contemplated under Section 43 of the Employment Act, 2007.

17. Regarding the disciplinary procedure adopted by the Respondent prior to the dismissal, the Claimant was issued with a Notice of Disciplinary Enquiry/Hearing Form (GD3) on 25th October 2013. Pursuant to this Notice, the Claimant attended a disciplinary hearing on 31st October 2013 at which he made oral

representations. It seems to me therefore that the procedural fairness requirements set out under Section 41 of the Employment Act were also satisfied.

18. These findings dispense with the claims for compensation for unlawful dismissal and one month's salary in lieu of notice.

Other Remedies

19. The Claimant also claims service pay. However, from the evidence on record, he was a contributing member of the National Social Security Fund (NSSF) and this claim is therefore without basis and is dismissed. In response to the claim for unremitted NSSF dues, the Respondent produced an updated statement showing that all the dues on the Claimant's account had been remitted. This claim therefore also fails and is dismissed.

20. In the upshot, the Claimant's entire claim is dismissed with each party bearing their own costs.

21. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 28TH DAY OF APRIL 2017

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JUDGE

Appearance:

Mr. Manyara for the Claimant

Mr. Makori for the Respondent