



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

CAUSE NUMBER 254 OF 2014

PETER SHIKANGA.....CLAIMANT

VERSUS

KENS METAL LIMITED.....RESPONDENT

JUDGMENT

1. The claimant pleaded that he was employed by the respondent a general worker from 1992 and rose through the ranks to the level of supervisor. He further averred that in 2006 he became a shop steward for KUCFAW representing fellow employees interests in the respondent company.
2. The claimant further pleaded that he served with due diligence until he was according to him unlawfully and unfairly dismissed on 3rd February, 2014. Upon dismissal, he claimed he was forced to write an apology letter to indicate he had been negligent in carrying out his duties. The claimant complained that prior to dismissal he was never summoned to a disciplinary committee hearing. According to him, his termination was due to his participation in trade union activities.
3. The respondent on its part pleaded that on 31st January, 2014 there was a cash sale for 400 pieces of PN20 25mm pipes, 200 pieces of PPR PN 20 20mm and 100 pieces of PPR PN20 32 mm pipes to Sideview Traders and the claimant was responsible for the sale in charge of loading. The claimant instructed a loader Mr Bosco Kitunga to load 450 pieces which were more by 50 pieces.
4. The claimant in his statement admitted loading extra material. The claimant was invited to a disciplinary hearing on 1st February, 2014 and given a chance to explain how the extra 50 pieces of PPR PON 20 25mm pipes were loaded however the claimant's explanation was found unacceptable and consequently summarily dismissed. Upon dismissal, the claimant was paid his terminal dues including accrued leave.
5. In his oral evidence the claimant steed that the cash sale receipt for the customer got misplaced but was later found the receipt had no excess but the loaders added additional goods not in the receipt. He stated that he was the one who wrote the apology letter (appendix 4 of the respondent's bundle of documents) but qualified that he was forced to write the dame.
6. In cross-examination he stated that the dismissal letter did not mention that his dismissal was as a result of union membership. He further conceded that as a supervisor he ought to have confirmed the order tallied with the loaded goods. He further admitted that he was present at the disciplinary committee meeting.

7. Respondent's witness Mr Joash Baraza testified that the claimant was not dismissed due to his union activities. According to him, the claimant was assigned responsibility to load goods for a customer. He was the one who was to direct the labourers to load the goods and ensure correct quantity was loaded. The claimant loaded extra pieces of pipes and this was not a normal mistake since he had made similar mistakes before and was forgiven.

8. The claimant herein had pleaded that he was dismissed because of his union activities. However, the evidence including claimant's own testimony show he was dismissed as a result of excess loading of material ordered by a customer. The claimant showed no connection between his dismissal and his union activities.

9. The claimant accepted that the goods loaded were in excess of the order by the customer but stated that it was a mistake. In cross-examination he conceded that as the supervisor he ought to have ensured the goods loaded tallied with the order on the receipts.

10. Negligence is a valid reason for which an employee's services can be terminated, however, whether the termination is the only remedy to be meted out varies from employer to employer. The test usually is that if a reasonable employer would dismiss then the dismissal would be upheld. In this particular case the claimant had a history of a similar mistake hence the decision to dismiss him this time round could not be said to have been unreasonable.

11. The court therefore dismisses the claim that the dismissal was unjust and unfair. Concerning the procedure for dismissal, the claimant himself conceded that he attended the disciplinary hearing and recognized the minutes taken at the said hearing when drawn to his attention by the defence counsel. The claimant had no quarrel with the disciplinary hearing. His complaint was that the ultimate decision to dismiss him was arrived at because of his involvement in union activities. The court therefore finds no fault with the procedure followed before the claimant was dismissed.

12. The claimant claims service pay for the period worked. The respondent countered this by saying that the claimant is not entitled to make this claim since he was registered with NSSF. The respondent however never attached any statement or produced any evidence that the claimant was a member of NSSF to effectively rebut his claim for service pay. The court therefore enters judgement in respect of this claim.

13. In conclusion the court awards the claimant Kshs 208,998/= on account of service pay. The claimant shall further have costs of the suit.

14. It is so ordered.

Dated at Nairobi this 14th day of July 2017

Abuodha J. N.

Judge

Delivered this 14th day of July 2017

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge