



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NUMBER 476 OF 2014

JOHN JABUYA.....CLAIMANT

VERSUS

PRIMAROSA FLOWERS LTD.....RESPONDENT

JUDGMENT

1. In the memorandum of claim filed on 25th March, 2014 the claimant pleaded that he was at all material times employed by the respondent as a driver at the respondent's head office in Athi River. He was initially hired on 17th May, 2005 and later promoted to full transport manager. The claimant also averred that he headed the workshop and security docket on acting capacity.

2. According to the claimant his contract provided for probationary period of three months upon successful completion of which he continued to serve the respondent until his services were terminated on 14th January, 2014. At the time of his dismissal, the claimant was earning Kshs 41,222/=. The claimant further pleaded that during his period of employment with the respondent he undertook his duties diligently and efficiently with no complaints, warning or disciplinary action taken against him.

On 5th January, 2014 through an email dated 5th January, 2014 the CEO of the respondent ordered him to terminate the services of some drivers who the CEO allegedly found sleeping but the claimant declined to do so because this fell within the domain of the human resource department.

3. The claimant further averred that the said drivers were unionisable employees and therefore assuming the allegations by the CEO were correct, the proper procedure in terminating their services was as set out in the applicable CBA. On 6th January, 2014 the claimant received a warning letter through email from the CEO alleging that he had engaged in altercation with the CEO of the respondent which was disrespectful. Eight days later the claimant's services were terminated through a letter dated 14th January, 2014.

4. The claimant contended that the termination of his services was unfair and illegal and went against the spirit of the Employment Act, 2007. The claimant averred that he was not provided with a formal charge on the allegations raised nor granted an opportunity to respond to the charges.

5. The respondent on its part denied the claimant's allegations and averred that it never engaged the claimant as head of security since at all times it employed the services of a security firm which had a supervisor to oversee and manage the security docket. The respondent further averred that at all material times, the workshop had been run and managed by qualified technicians and foremen and denied the

claimant was ever tasked to head the workshop docket in acting capacity.

6. The respondent further pleaded that the claimant failed to carry out the respondent's lawful instructions in that he failed to inform other employees of the respondents that the respondent had terminated their employment. The respondent therefore contended that the termination of the claimant's employment was lawful and the reasons for the same was unequivocally made known to him.

7. In his oral evidence in court the claimant relied entirely on the bundle of documents filed in support of this claim. He further reiterated his position that he could not terminate the services of the drivers as demanded by the CEO because that was in the docket of human resource department. In cross-examination he admitted that he had nothing to show he was in charge of security as well. He denied there was no fight with Mr Kumar the CEO. He further denied insulting him.

8. Mr Maragu for the respondent informed the court that he joined the respondent in 2015 as Human Resource Manager. According to him the claimant was terminated due to misconduct. Some employees under the claimant were found sleeping while on duty and the claimant was asked to take disciplinary action but refused. According to him the claimant was to report the matter to HR for action.

9. In cross examination he stated that he joined the respondent after the claimant had been terminated. He further stated that he could not ascertain whether the claimant was assigned additional duties. According to him, the claimant had no power to terminate services of the employees. It was further his evidence that he was not aware if any disciplinary process was followed prior to the termination of claimant's services.

10. In termination of employment cases, the Act places the burden of proving the reason for termination on the employer. Once the employer proves or demonstrates that there existed valid and or justifiable reasons for termination of any employees services, the employer must go a step further to show that the termination was carried out through a fair procedure. The claimant herein was accused of insubordination. That is to say he refused to take action against some employees who the respondent's CEO allegedly found asleep while on duty. The claimant gave his reason why he could not take action against the said employees as demanded by the CEO. He was further accused of insulting or engaging in altercation with the CEO over this issue.

11. The CEO, Mr Kumar did not come to court to testify in the matter and no reason was given why he could not be called yet he is the person alleged to have been insubordinated by the claimant. The claimant had plausible reasons why he could not take action against the employees concerned as demanded by the CEO. This could have called for a disciplinary hearing where the claimant would have been given an opportunity to defend himself. The respondent witness Mr James Maragu told the court he could not remember if any disciplinary process took place prior to terminating the claimant's services.

12. The evidence by the respondent therefore fell below the required standard of proof. The court therefore inevitably reaches the conclusion that there existed no valid or justifiable reasons for the termination of claimant's services further the termination was not carried in accordance with the procedure provided for under the Employment Act hence unfair.

13. The court therefore enters judgement against the respondent as follows :

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| a. One month's salary in lieu of notice | 41,222 |
| b. Eight months salary on account of
compensation for unfair termination of service | <u>329,776</u> |
| | <u>370,998</u> |
| c. Costs of the suit | |

14. Other heads of claim though pleaded, were not adequately proved by the claimant hence have been disallowed.

15. It is so ordered.

Dated at Nairobi this 29th day of September, 2017

Abuodha J. N.

Judge

Delivered this 29th day of September, 2017

Abuodha J. N.

Judge

In the presence of :

.....Claimant

..... Respondent