



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT
AT MOMBASA
CAUSE NUMBER 515 OF 2015

BETWEEN

REUBEN RADHI KATANA
CLAIMANT

VERSUS

TEXAS ALARMS [K] LIMITED
RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Otieno Asewe & Company Advocates for the Claimant

Stephen Oddiaga & Company Advocates for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim, on 20th July 2015. He states he was employed by the Respondent Company as a Technician effective 3rd July 2013. His contract was terminated by the Respondent on 30th December 2014, without justification. He did not go to work on 29th December 2014 as he had personal problems. He tried to communicate his absence to Assistant Technical Manager Mina, but the phone did not go through. It was when he reported the following day that his contract was terminated. His last salary rate was Kshs. 18,000 monthly. He feels termination was unfair and unlawful and seeks Judgment against the Respondent for the following:-

- a) 1 month salary in lieu of notice at Kshs. 18,000.
- b) Annual leave of 40 days at Kshs. 27,692.
- c) 12 months' salary in compensation for unfair termination at Kshs. 216,000

d) Costs.

e) Interest.

f) Any other suitable relief.

2. The Respondent filed its Statement of Response on 24th August 2015. It concedes having employed the Claimant in the position of Technician, on a monthly salary of Kshs. 18,000 as of the date of termination. He was summarily dismissed on 30th December 2014 for gross misconduct. The Claim is made in bad faith. The Respondent prays the Claim is dismissed with costs to the Respondent.

3. Parties agreed in Court on 20th March 2017, to have the Claim determined on the strength of the record. They confirmed filing of their Closing Submissions at the last mention on 28th July 2017.

The Court Finds:-

4. The Court has carefully waded through the record. In particular, the Court has examined the Witness Statements filed by Reuben Radhi Katana, the Claimant herein, and Benard Odhiambo Aduda, Respondent's Human Resources Manager.

5. It is not disputed that: the Claimant was employed by the Respondent as an Installation Technician on 8th July 2013; he earned Kshs. 18,000 monthly as at the time of summary dismissal on 30th December 2014; he travelled upcountry for Christmas on 24th December 2014; he was scheduled to go back to work on 29th December 2014; and he did not go back on 29th December 2014.

6. The Claimant explained his failure on the ground that he had family problems which he had to resolve before traveling back as scheduled. The Court does not accept this explanation. The nature of the family problems which prevented the Claimant from returning to work as scheduled were not disclosed anywhere in the record.

7. The 2 Witnesses agree the Claimant returned on 30th December 2014. He was referred to the Human Resources Manager on 2nd January 2015. He did not see him until sometime in Mid-January 2015. He was asked to write a letter explaining his absence. The Claimant states he wrote a letter explaining, gave it to the Human Resources Manager, but the Claimant did not retain a copy. Aduda states the Claimant declined to write a letter as instructed. The Court has seen nothing to support the Claimant's position that he wrote an explanation as instructed. He did not even see Aduda on 8th January 2015 as instructed to do. He communicated with Aduda on *whatsapp* saying he had traveled upcountry.

8. Against this backdrop, the Court is satisfied the Respondent had valid ground in summarily dismissing the Claimant. He absented himself from the appointed place or work, without lawful cause or leave of his Employer. When asked to write an explanation and shed light on the reasons for his delayed return, he declined to write the letter. He continued to absent himself. There were 2 distinctive employment offences under Section 44 [4] which in the view of the Court, the Claimant was involved in: he absented himself without lawful cause; and disobeyed the lawful command of his Employer, to write an explanatory letter.

9. Termination was based on valid reason. It was justifiable under Sections 43, 44 and 45 of the Employment Act.

10. The procedure did not meet the standards of fairness under Section 41 and 45 of the Employment Act. There were no charges drawn against the Claimant for either of the two possible offences. He was asked to show cause why he was absent. There were no charges in a disciplinary set up. Show cause letters are not disciplinary tools at the workplace; they are investigatory tools. There must be charges drawn, and

explained to the Employee, in a language understood by the Employee. There must be a hearing attended by the Persons mentioned at Section 41 of the Employment Act.

11. The letter of summary dismissal does not suggest the Claimant was heard, in the manner prescribed by law. He was available to be taken through a proper disciplinary hearing, though he was given to withdrawing to his rural home at will. Aduda mentions several occasions when the Claimant was available at the workplace. There was no reason why he was not taken through a hearing, in one of those days when he was readily available.

12. The record suggests and the Court concludes termination was based on valid ground, but fell short of the minimum standards of fairness contemplated under the Employment Act.

13. ***The Claimant is granted 3 ½ months' salary in compensation for unfair termination, computed at Kshs. 63,000.*** The Court has in assessing this amount, taken into account that the Claimant was partly responsible for the circumstances leading to his dismissal, and also, the fact that he had only served 1 ½ years.

14. The prayer for notice pay is rejected as there were sufficient grounds to justify summary dismissal, under Section 44 [4] of the Employment Act. Summary dismissal is defined as termination without notice, or less notice than warranted under the law or the contract.

15. The Claimant's contract entitled him to 26 days of annual leave after completion of every 12 months of continuous service. He claims annual leave pay of 40 days. He worked from July 2013 to December 2014, a period of about 1½ years. He submits that the Respondent did not produce legible leave records, and he merits the sum of Kshs. 27,692 under this head. The leave application/approval forms produced by the Respondent were nor clearly readable. They however suggest the Claimant applied for leave at some point. There is a pay slip dated 30th September 2014, which is easily readable, indicating the Claimant was paid salary in lieu of annual leave at Kshs. 11,919. His prayer for additional annual leave pay is without merit.

IN SUM, IT IS ORDERED:-

a) Termination was based on valid reason, but procedure was unfair.

b) The Respondent shall pay to the Claimant 3 ½ months' salary at Kshs. 63,000.

c) No order on the costs.

d) Interest allowed at 14% per annum from the date of Judgment till payment in full.

Dated and delivered at Mombasa this 24th day of October 2017.

James Rika

Judge