



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

CAUSE NO. 16 OF 2017

(Originally Kericho Cause No. 114 of 2016)

WLATER NDETA

CLAIMANT

v

UNGA LIMITED

RESPONDENT

JUDGMENT

1. Walter Ndeta (Claimant) instituted legal proceedings against Unga Ltd (the Respondent) on 4 July 2016 and he stated the issues in dispute as
 - (a) Whether the claimant was unlawfully and procedurally and unfairly terminated from employment by the respondent
 - (b) Whether the claimant is entitled to compensation for unlawful and procedural and unfair termination from employment as prayed for in this memorandum of claim
 - (c) Whether the claimant is entitled to an award of certificate of service and
 - (d) Who should pay costs of the suit?
2. The claimant sought a total of Kshs 846,511/- and a declaration that the termination of his contract was unfair.
3. The Respondent filed a *Response* on 14 October 2016 (both parties filed and produced exhibits).
4. On 24 July 2017 the court adopted the *Issues* as be proposed by the Claimant, for purposes of the hearing.
5. The Cause was heard on 26 September 2017 when the Claimant testified and closed his case and on 1 November 2017 when the Respondent's Production Supervisor testified.
6. After close of hearing, the Court directed that Judgement would be delivered on 19 January 2018, but because of the transfer involving judges of the Court, the Court gave notice to the parties that the judgment would be delivered today.
7. The Claimant filed his submissions on 9 November 2017 while the Respondent filed its submissions on 21 November 2017.

8. The Court has considered the pleadings, evidence and submissions.

Background facts

9. The Claimant was engaged by the Respondent on fixed term contracts, the initial contract dated 24 January 2007 and the last contract being dated 1 July 2013, and which was to expire on 30 June 2015.

10. On 5 February 2014, the Respondent issued a show cause letter asking the Claimant to explain a fight he had been involved in the workplace.

11. An inconclusive hearing was held on 17 February 2014 after which the Claimant was suspended for 2 weeks to pave way for conclusive investigations.

12. On 28 February 2014, the Respondent invited the Claimant to attend a disciplinary hearing to be held on 4 March 2014. The invitation informed the Claimant that he could be accompanied by another employee of his choice.

13. The hearing was held on 5 March 2014 and the panel recommended that the Claimant be summarily dismissed.

14. The Respondent dismissed the Claimant through a letter dated 5 March 2014 prompting the instant Cause.

15. The Court will evaluate the Cause along the lines of *Issues* as framed by the Claimant and adopted by the Court.

Whether the dismissal was unfair

Procedural fairness

16. The Claimant was issued with a show cause letter on 5 February 2014 outlining the allegations he was to confront.

17. An inconclusive hearing was then held on 17 February 2014. The hearing was followed with another hearing on 4 March 2014.

18. From the evidence before Court, it is clear that in the course of the disciplinary process, the Claimant had opportunity to make written as well as oral representations.

19. The Court is therefore satisfied that the Respondent complied with the statutory procedural fairness requirements as contemplated by section 41 of the Employment Act, 2007.

Substantive fairness

20. The allegation against the Claimant was fighting in the workplace contrary to the Respondent's *Code of Business Conduct and Ethics*.

21. Although the Claimant denied during cross examination that that he fought in the workplace, there is ample evidence to show that he was involved in a fight with another employee who was in fact his relative.

22. Even the Claimant's own letter dated 4 March 2014 show that there was an altercation and that after a family meeting, the issues surrounding the fight were resolved.

23. Because the conduct in which the Claimant was involved in was out rightly forbidden by the Respondent's *Code of Business Conduct and Ethics*, the Court is satisfied that the summary dismissal of

