

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 173 OF 2017

DANIEL GITHINJI KIHUMBA..... CLAIMANT

VERSUS

LENGETIA LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Wednesday, 20th December, 2017)

JUDGMENT

The claimant filed the memorandum of claim on 04.05.2017 through C.M. King'ori & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) A declaration that the termination of the claimant's employment amounts to unfair constructive dismissal or unfair termination.
- b) Compensation equivalent to 12 months.
- c) Any other or better relief.
- d) Costs and interest.

The memorandum of response was filed on 30.06.2017 through the Agricultural Employers' Association. The respondent prayed that the claimant's suit be dismissed with costs.

The respondent employed the claimant from August 2011 to September 2016 to maintain the fence. As at termination the claimant's monthly pay was Kshs. 12, 600.00.

The claimant testified that he served with a clean record until 2015 when the respondent started treating him contemptuously and suggesting that he was not desired at the respondent's farm. In particular, he testified that the directors L.N Sessions and Patrick Sessions variously insulted him. He was denied some amenities at the farm and at one time he reported the insulting conduct to the police and the directors apologised promising not to repeat the same. Due to the ill treatment, the claimant testified that he orally resigned on 13.09.2016 but the respondent, instead of accepting the resignation, decided to terminate the claimant's employment on 15.09.2016 by paying terminal dues which included pay for days' worked and accrued annual leave.

In cross examination, the claimant testified that he wished to resign but his resignation was not accepted. Prior to the offer to resign, the claimant testified that there were allegations of misconduct against him. There was a gate he used from his residence to work. Though other workers were allowed to use it, he had been denied the opportunity to use it so that he had to walk and use the gate 3 Km away. The gate he was denied to use was 0.5 Km away. He also stated that he was paid at the labour office the agreed terminal dues.

The respondent's case was that the claimant reported to the Administration Police Post that the respondent had insulted him and discriminated against him. The matter was mediated by the police officers and it was amicably resolved. Later on 12.09.2016 there was a misconduct alleged against the claimant. A disciplinary hearing was carried out, and instead of waiting for the verdict, the claimant opted

to resign despite a grievance about discrimination as he had alleged against the respondent. The claimant's terminal dues were calculated at Kshs. 8, 033.00 and paid. The labour officer was involved and a certificate of full and final payment was signed.

The claimant has by his own evidence confirmed that he offered to resign and at the time of resignation he had been confronted by some disciplinary case. Thus the court returns that the claimant voluntarily offered to resign and the same was verbal leading to payment of his terminal dues. Further, the court returns that in this case, the claimant voluntarily resigned, there was no case of constructive dismissal, and the parties' separation did not amount to unfair termination. The court further returns that by the claimant's own evidence, the terminal dues were agreed upon before the labour officer. Accordingly the court returns that the claimant's suit will fail. The court has considered that the respondent failed to file the final submissions as was directed and considers that there will be no orders as to costs.

In conclusion the claimant's suit is hereby dismissed with no orders as to costs.

Signed, dated and delivered in court at **Nyeri** this **Wednesday, 20th December, 2017.**

BYRAM ONGAYA

JUDGE