



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 75 OF 2017

VINCENT ONTERI OMBABA.....CLAIMANT

VERSUS

SANA INDUSTRIES LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 8th December, 2017)

JUDGMENT

The claimant filed the memorandum of claim on 14.03.2017 through Mwaura Kamau & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) A declaration that the claimant's dismissal from his employment was wrong, unfair and unlawful.
- b) A declaration that the claimant is entitled to payment of his terminal dues and compensatory damages as pleaded being Kshs.208, 602.93 and the respondent to pay the claimant accordingly.
- c) Interest from the date of filing the suit till payment thereof.
- d) Costs of the suit plus interest thereon.

The respondent, despite service, failed to enter appearance, to file a response or to attend the mentions or hearings.

The claimant testified to support his case.

The claimant testified that the respondent employed him from 2009 to 2015. The claimant worked at the respondent's packaging department at Kshs. 310.00 per day and at termination at Kshs. 530.00 per day.

The claimant testified that he was a member of the Kenya union of Hair and Beauty and in 2013 he was one of the persons promoting the registration of that union. The union was subsequently registered, recognised by the respondent, and the respondent's employees elected shop stewards. The claimant was one of them.

On 22.07.2015, as the claimant reported at work, he encountered co-workers at the respondent's gate and who were restraining the other workers from entering the respondent's premises to work. Subsequently, the claimant testified that the respondent's management took the view that the union had failed to protect the respondent's interests. At the same time, the workers alleged that the shop stewards had been bribed

by the respondent's management not to protect the workers' interests. The management held a meeting and the shop stewards explained the workers' grievances. The respondent's human resources manager then alleged that the claimant had hit him with a stone on the date of the strike, 22.07.2015. The claimant testified that the allegation was untrue. On that account, the claimant was suspended and then invited for a disciplinary hearing on 30.07.2017 but the human resources manager was absent. The claimant was directed to go away until he was summoned to collect a letter for summary dismissal.

The letter of summary dismissal was dated 05.08.2015 and the claimant was dismissed upon allegations of assaulting a manager by the name Mr. Jeon when the claimant was allegedly blocking fellow employees from entering the factory. The claimant appealed against the dismissal by his letter dated 11.08.2015 on the grounds that he had not been given an opportunity to defend himself, that he had a clean record of service, and there had been no witnesses - clearly indicating that the case of summary dismissal lacked basis. The claimant received no reply. He filed the present suit.

To answer the **1st issue** for determination the court returns that the summary dismissal amounted to unfair termination because the respondent failed to establish the alleged reason for termination as envisaged in section 43 and 47 (5) of the Employment Act, 2007.

To answer the **2nd issue** for determination, the court makes the following findings on the remedies as prayed for:

- a) The claimant is entitled to a declaration that the claimant's dismissal from his employment was wrong, unfair and unlawful.
- b) The claimant is entitled to **Kshs.11, 488.00** being one month pay in lieu of termination notice.
- c) The court has considered the long service of over 6 years, the otherwise clean record of service and that the claimant did not contribute to his termination. He is awarded 12 months' compensation under section 49(1) (c) of the Employment Act, 2007 at Kshs. 11, 488.00 per month making **Kshs. 137, 856.00** as prayed for.
- d) Since the claimant was a member of NSSF, gratuity as prayed for is declined in view of section 35(6) of the Act.
- e) The claimant is awarded pro rata leave for one month making **Kshs. 670.13** as prayed for and a further **Kshs. 24, 124.08** being pay in lieu of annual leave as prayed for.

In conclusion judgment is entered for the claimant against the respondent for:

- 1) The declaration that the claimant's dismissal from the employment was wrong, unfair and unlawful.
- 2) The respondent to pay the claimant **Kshs.174, 138.21** by 15.01.2018 failing interest at court rates and from the date of this judgment to be payable thereon till full payment.
- 3) The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 8th December, 2017.**

BYRAM ONGAYA

JUDGE