



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1183 OF 2010**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 21<sup>st</sup> January 2016)**

**KENYA UNION OF PRINTING, PUBLISHING, PAPER**

**MANUFACTURERS & ALLIED WORKERS.....CLAIMANT**

**VERSUS**

**PRINT PAK LIMITED.....RESPONDENT**

**JUDGMENT OF THE COURT**

1. The Claimant filed their Memorandum of Claim on 6.10.2010 on behalf of the Grievant Beatrice Maina seeking damages for unfair/unlawful termination and in the alternative reinstatement without loss of benefits. The Grievant alleges that in June, 1989, she was employed by the Respondent as a Secretary earning a salary of Shs. 600/= per month without house allowance. She was later employed on a permanent basis and moved to the office of the Managing Director and then to the Chairman's office serving in the same capacity. That on 5<sup>th</sup> December, 2008, the Grievant was summarily dismissed without any lawful justification. At the time of dismissal she was earning a salary of Shs. 15,614/= plus house allowance of Shs. 3,000/= per month.
2. The circumstances leading to her dismissal were that on or about 5.12.2008, at around 9.30 a.m the Grievant was visited by two policemen from Makongeni Police Station who picked her up for questioning with regard to security in the firm. She was held at the police station and interrogated and was released on 8.12.2008 when she was told to go home and report back at the Police Station on 13.12.2008. On reporting at the Police Station on 13.12.2008, she was told to report again at the Station on 16.12.2008 on which date she was told that she had no case to answer and was advised to go see the Respondent's chairman.
3. When she reported at the Respondent's premises she was met by the Human Resource Manager who brought her a termination letter dated 5.12.2008, which was to be handed to her but she decided to seek the advice of the shop steward first before signing any document from the Respondent. She reported the matter to her union and when she went back to collect the dismissal letter, the Human Resource Manager refused to give it to her. Conciliation meetings were attempted but all in vain.
4. The Grievant alleges that she was not given an opportunity to be heard prior to the dismissal and neither was she given any reason for the termination of employment.

5. The Respondent filed a Response to Claim on 5.04.2011, admitting the employment relationship but denying that the Claimant worked diligently without misconduct. The letter of appointment is annexed to the Memorandum of Defence as appendix – 1. The Respondent also alleges that the Claimant’s contract was terminated on account of desertion of duties.
6. According to the RW1 the chronology of events that led to the dismissal of the Claimant are that on 5.12.2008, two visitors came to the Respondent’s offices and went to the Chairman’s office where they introduced themselves as police officers. They wanted to question the Grievant who was not known to them and as such the chairman introduced the Grievant to the police officers who took her away to the police station for questioning. The Grievant did not report to work the following day and did not inform the Respondent of what had transpired. The Grievant allegedly did not respond to phone calls from the Respondent either.
7. On 16.12.2008, the Respondent having waited for over ten (10) days treated the Grievant as a deserter and proceeded to calculate her terminal dues which were forwarded to the Labour offices.
8. The Respondent further states that the Grievant had a chequered disciplinary record. On 11.03.2004, the Grievant received a warning letter (appendix 4) from the Respondent for leaking confidential information and insubordination.
9. Further on 27.09.2005, the Grievant received another warning letter (appendix 5) regarding leaked information to another Company.
10. It is the Respondent’s position that the termination was lawful since the Grievant did not report to work from the time she was taken by the police on 5.12.2008, and neither did she report to work as alleged on 16.12.2008.
11. The Respondent submits that the alleged report of inquiry was not availed to the Claimant because it had nothing to do with the arrest and neither did they tailor the arrest in order to dismiss her. The Respondent also denied that the Grievant had worked for nineteen (19) years without any disciplinary issue and relies on warning letters previously issued.
12. The Respondent further alleges that the suit is defective for the reason that it is not accompanied by a verifying affidavit sworn by the Grievant and but by an affidavit by the General Secretary of the Claimant union.
13. Having considered the evidence of both parties, the issues for consideration by this Court are as follows:
  1. ***Whether the Claimant was dismissed or she absconded.***
  2. ***If she was dismissed, whether there were valid reasons to dismiss her.***
  3. ***Whether due process was followed.***
  4. ***What remedies if any, the Claimant is entitled to.***
14. On the 1<sup>st</sup> issue, the Claimant avers that she was dismissed after the Respondents instigated her arrest for unknown reasons. The police did their investigations and found her not culpable. They then released her. She attempted to back to the office but the Respondents informed her that her services were no longer required. She was verbally dismissed.
15. The Respondents on their part aver that the Claimant absconded duty and she was later dismissed for that purpose. The question then is who is being truthful.
16. From the proceedings, there is evidence that the Claimant worked for Respondent from 1987 as

per her appointment letter (Appendix 1).

17. The point of separation is said to have been sometime towards the end of 2008. In 2009 the Claimant Union reported a trade dispute on this issue and the Conciliator attempted to resolve it and failed and so gave them a certificate of failing to agree in 2010. There is Claimant's Appendix 6 – a dismissal letter dated 16.12.2008 addressed to the Labour Officer and copied to the Claimant. One however wonders why the Claimant's termination letter is addressed to the Labour Office and not the Grievant herself.

18. On 5.12.2008, the Grievant had recorded a statement at Makongeni police station stating that she had been arrested at her place of work and this is an indication that the Respondents knew of her whereabouts. This statement was in fact part of Respondents documents. They however choose to dismiss her pretending that she had absconded duty and without issuing her with any termination letter.

19. It is my finding that the allegation that the Claimant absconded duty is not true and the truth is that the Grievant was dismissed by the Respondents for their own reasons.

20. On issue of reasons for the dismissal, Appendix 6 – the dismissal letter produced by the Claimant states that the Claimant was summarily dismissed in accordance with Section 44 (g) of Employment Act 2009. The said section deals with summary dismissal for committing a criminal offence to the detriment of the employer's property.

21. We are not told which criminal offence the Grievant is said to have committed. The letter is vague and these reasons were not reasons that the Grievant had been informed of or was aware of. I therefore find that there was no valid reason to warrant Grievant's dismissal.

22. On 3<sup>rd</sup> issue, due process was never followed. The process envisaged is one set out under Section 41 of Employment Act 2007 which states as follows:

**“(1). Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.**

**(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44 (3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.”**

23. I therefore find that the dismissal/termination of the Grievant was unfair and unjustified under Section 45 (1) & (2) of Employment Act 2007 which states as follows:

1. *No employer shall terminate the employment of an employee unfairly.*
2. *A termination of employment by an employer is unfair if the employer fails to prove:*
  - a. *that the reason for the termination is valid;*
  - b. *that the reason for the termination is a fair reason:-*
    - i. *related to the employee's conduct, capacity or compatibility; or*
    - ii. *based on the operational requirements of the employer; and*
  - c. *that the employment was terminated in accordance with fair procedure.*

24. I therefore find for Grievant and I award her as follows:

1. *2 months salary in lieu of notice as per the Collective Bargaining Agreement Clause 12 = 18,614/= x 2 = 37,228/=.*
2. *Gratuity as per the Bargaining Agreement being 15 days salary for every year worked =  $\frac{1}{2}$  x 18,614 x 19 = 176,833/=.*
3. *12 months salary as damages for wrongful termination = 12 x 18,614 = 223,368/=.*
4. *Kshs.11,272/= admitted by Respondents in the Grievants termination letter.*

**TOTAL = 448,701/=**

5. *Issuance of a Certificate of Service plus costs and interest.*

Read in open Court this 21<sup>st</sup> day of January, 2016.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Richard Onyango holding brief for Said Kimari for the Union – Present

No appearance for Respondent