



**REPUBLIC OF KENYA**

**EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT KERICHO**

**CAUSE NO.15 OF 2014**

*(Before D. K. N. Marete)*

JOSEPH KIPKETER.....CLAIMANT

VERSUS

SBI INTERNATIONAL HOLDINGS AG (KENYA).....RESPONDENT

**JUDGEMENT**

This matter was originated vide a Memorandum of Claim dated 11th September, 2014. The issue in dispute is therein cited as

*“Unfair and/or wrongful dismissal and/or termination from work, failure to give notice before termination and/or payment in lieu of notice, failure to give notice of the accusations against the Claimant, failure to give notice of the hearing that took place, failure to give the Claimant a chance to be heard, failure to pay terminal benefits and salary due.”*

The respondent in a Memorandum of Reply dated 3rd November, 2014 denies the claim and prays that the same be dismissed with costs.

The claimants case is that he was an employee of the respondent having been employed in 2010 as a Foreman. He served the respondent diligently until 2014 when he received a letter dated 20<sup>th</sup> July, 2014 terminating his services alleging that he had been served with a let and had appeared before the Respondent's Project Engineer on 27<sup>th</sup> June, 2014. (See JK 1). The Claimant had never received such a letter and did not appear before Engineer on the aforementioned date.

It is the claimants further case that his termination of employment was unlawful in that the respondent failed to issue a notice of termination, notice of accusations against him and alleged hearing and also failure to afford a fair hearing to the claimant. There was no proof of reasons for termination by the respondent. He prays for;

4.1 That this Honourable Court do declare that the termination of the employment of the Claimant was unfair, illegal and contrary to the Provisions of Sections 35 (1) (c), 36, 41 and 43 of the Employment Act, 2007.

4.2 That this Honourable Court do order the Respondent to compensate the Claimant for:-

- i. One months salary in lieu of notice =Kshs. 57,000/=
- ii. Annual leave i.e Kshs. 1411 x 17 days =Kshs. 23,987/=
- iii. Salary for July, 2014 = Kshs. 57,000/=
- iv. 12 months compensation for unlawful dismissal = Kshs.57,000 x 12 = Kshs.684,000/=
- a) Gratuity being 1 month's ½ pay for completed years i.e 28,500 x 4 years = Kshs.144,000/=
- b) Costs of the claim
- c) Interest on b), c) and d) above at court rates
- d) Any other relief this Honourable Court may deem fit to grant

The respondent in opposition to the claim submits that it issued a Notice to Show Cause on 27th June, 2014 and also invited the claimant to a hearing on 30th June, 2014 to answer allegations of commission or suspected commission of a criminal offence against or to the detriment of the respondent. The respondent's further case is that she did not terminate the employment on grounds of poor performance as hereunder;

5. In specific reply to paragraph 2.6 of the Memorandum of Claim, the Respondent states that contrary to Claimant's allegations, the Respondent did not terminate and did not inform the Claimant nor lead the Claimant to believe that it was terminating the Claimant's services on account of poor performance.

The respondent denies that disciplinary hearing was conducted unilaterally in that he was not afforded a hearing or that he was not paid his dues as follows;

8. In reply to paragraphs 3.1, 3.2, 3.3, 3.4 & 4.1 of the Memorandum of Claim, the Respondent states that Claimant's services were lawfully and procedurally terminated with effect from 20<sup>th</sup> July 2014 following a hearing conducted on 30<sup>th</sup> June 2014 and after considering the defence put forth by the Claimant to the allegations against him. Annexed hereto and marked as Exhibit 2 is a copy of letter of termination of employment dated 20<sup>th</sup> July 2014.

9. The Respondent states that the Claimant has been paid his salary for the month of June. Annexed hereto and marked as Exhibit 3 is a copy of cheque number 000944 and dated 31<sup>st</sup> June 2014.

She also denies that the claimant handed over on departure from employment;

10. The Respondent states that the Claimant has not completed the handover process to handover any of the Respondent's property in his possession.

The issues for determination therefore are;

1. Was the termination of the employment of the claimant by the respondent wrongful, unfair and unlawful?
2. Is the claimant entitled to the relief sought?
3. Who bears the costs of this claim?

The 1st issue for determination is whether the termination of the employment of the claimant by the respondent was wrongful, unfair and unlawful. In his written submissions, the claimant reiterates his case and puts in a case of wrongful, unfair and unlawful termination of his employment. The respondent vehemently denies this. At paragraph 2.2 of the claim, the claimant in furtherance of his claim for unlawful termination denies ever having received a show cause letter or even having appeared before the project engineer on 27th June, 2014. However, in his written submissions the claimant espouses a different tale relating to the subject matter of events leading to disciplinary proceedings as follows;

*“What is more, we submit that the Claimant was given short notice, if any to prepare for his defence. The Claimant was given a notice to show cause on 27<sup>th</sup> June, 2014 and summoned to appear before the Respondent’s Project Manager on 30<sup>th</sup> June, 2014. The Claimant testified that he did not attend the disciplinary meeting on 30<sup>th</sup> June, 2014 as he was not informed of its purpose. He only signed the notice to show cause letter in order to get his termination letter as directed by the Respondent. The Claimant further stated in his evidence that the Respondent’s payroll Account did not explain to him the purpose and content of the letter dated 30<sup>th</sup> June, 2014.”*

This is a contradiction of terms. It does not portray an elegant view of the reliability of the evidence of the claimant in the matter. Its credibility gets tattered and compromised. The respondent in his defence and written submissions adduces evidence of a case where due process was pursued in the termination of the employment of the claimant. This is not controverted or in any way contradicted by any substantial evidence of the claimant. I therefore find a case of lawful termination of employment and hold as such. This answers the 1st issue for determination.

On the basis of the finding of the 1st issue for determination, the 2nd issue eclipses and is lost in the willows. It becomes belated and a non-issue for any consideration.

I am therefore inclined to dismiss the claim with costs to respondent. This clears all the issues for consideration.

Delivered, dated and signed this 17th day of February 2016.

**D.K.Njagi Marete**

**JUDGE**

Appearances

1. Mr. Cheruiyot instructed by Kiplenge & Kurgat Company & Advocates for the claimant.
2. Mr. Obok instructed by Professor Mumma & Company Advocates for the respondent.