



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 265 OF 2014

MOSES LASITI LEPERE..... CLAIMANT

V

MARULA ESTATE LIMITED.....RESPONDENT

JUDGMENT

1. Moses Lasiti Lepere (Claimant) was employed by Marula Estate Ltd (Respondent) on 1 April 2007 as a general worker.
2. The Claimant commenced the present proceedings on 1 July 2014 and the issue in dispute was stated as *unfair termination*.
3. The Respondent filed a Response on 24 July 2014 and this prompted the Claimant to file a rejoinder on 28 July 2014. The Respondent filed its documents on 13 August 2014.
4. The Cause was heard on 29 June 2015 when the Claimant testified after which the Respondent sought and got an adjournment to 24 November 2015.
5. Come 24 November 2015, the Respondent's counsel indicated that he was ready to proceed but later, he informed the Court that he did not have any witness to offer and therefore he was closing the Respondent's case.
6. In his testimony, the Claimant stated that he was employed by the Respondent on 1 April 2007 as a night guard and he served until 13 August 2012 when he was dismissed.
7. On the circumstances surrounding the dismissal, the Claimant informed the Court that on 13 August 2012, some 2 bulls were stolen from the Respondent's farm which theft he reported to his supervisor and that after a search, the skin of one of the bulls was found while the other bull was found with the legs chopped.
8. Thereafter, he was arrested and taken to Gilgil Police Station and on returning to the workplace, he was suspended and on 14 August 2012, he was informed verbally by the Livestock Manager, Oshorua that his services were no longer required. He was not issued with a dismissal letter nor paid wages for August 2012.
9. The Claimant also stated that attempts to resolve the dispute through conciliation failed.
10. The Claimant denied in cross examination that he absconded work and confirmed that he was on duty the night the bulls were stolen.
11. The Claimant served the Respondent for about 5 years. He was paid by the month. Pursuant to section 35(1)(c) of the Employment Act, 2007 he was entitled to at least 28 days written notice of termination of employment.
12. No written notice was given and on that account, the Claimant has satisfied the test placed upon by employees by section 47(5) of the Employment Act, 2007 to demonstrate unfair dismissal.
13. By dint of section 41 of the Employment Act, 2007 the Respondent was under a statutory obligation to conduct a hearing. The hearing can be through correspondence or face to face, though it need not be a mini-court event.
14. The Respondent did not call any witnesses or tender any document to remotely suggest that it

- complied with the requirements of procedural fairness as prescribed by the section.
- 15.The Court is satisfied that the dismissal of the Claimant was devoid of procedural fairness and it so finds.
- 16.With the conclusion, it is not necessary to examine whether the Respondent has satisfied the obligation expected of employers by sections 43 and 45 of the Employment Act, 2007.

Appropriate remedies

1 month pay in lieu of notice

- 17.The Claimant sought Kshs 4,918/- under this head of claim. He is entitled to the same as he was not given the requisite notice.

Leave

- 18.This head of claim was abandoned mid way through the hearing.

Severance pay

- 19.The Claimant was not declared redundant and the claim for severance pay is therefore unsustainable.

Compensation

- 20.The Court has reached a conclusion that the dismissal of the Claimant was unfair. He served the Respondent for about 5 years.
- 21.Considering the period of service, the Court would award him the equivalent of 6 months gross wages as compensation. The Claimant's pay slip for June 2012 filed in Court by the Respondent show a gross wage of Kshs 9,279/- (less leave travelling allowance and leave pay).

Conclusion and Orders

- 22.The Court finds and holds that the dismissal of the Claimant was unfair and awards him and orders the Respondent to pay him

- a. 1 Month pay in lieu of Notice Kshs 4,918/-
b. 6 months wages compensation Kshs 55,674/-

TOTAL **Kshs 60,592/-**

- 23.The Claimant to have costs of Kshs 15,000/-.

Delivered, dated and signed in Nakuru on this 1st day of April 2016.

Radido Stephen

Judge

Appearances

For Claimant Mr. Muthanwa instructed by Muthanwa & Co. Advocates

For Respondent Mr. Mburu F.I. instructed by Mburu F.I. & Co. Advocates

Court Assistant Nixon