



REPUBLIC OF KENYA
EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO.249 OF 2015

(Before D. K. N. Marete)

MICHAEL KARANJA NJENGA.....CLAIMANT

VERSUS

KAIMOSI TEA ESTATE LIMITED (WILLIAMSON TEA).....RESPONDENT

JUDGEMENT

This matter was originated by way of a Memorandum of Claim dated 5th October, 2015. The issues in dispute are therein cited as;

- a. *Whether the claimant was unlawfully, unprocedurally and unfairly terminated from employment by the respondent.*
- b. *Whether the claimant is entitled to compensation for unlawful, unprocedural and unfair termination from employment as prayed for in this memorandum of claim.*
- c. *Whether the claimant is entitled to an award of a certificate of service.*
- d. *Who should pay costs and interest of the suit.*

The respondent denies the claim and prays that the same be dismissed with costs to herself.

The claimant's case is that at all material times to this suit, the claimant was employed by the respondent as a General Field Worker with effect from 1st

January, 2001 and earned a salary of Kshs. 6134.00 per month. At the time of his unfair termination, his salary was Kshs. 10,052.00.

The claimant's further case is that he served with loyalty, diligence, full dedication and commitment until the 17th July, 2015 when he was unprocedurally, illegally and unlawfully summarily dismissed without payment of terminal benefits.

It is the claimant's other case that he fell sick on 8th July, 2015 and orally sought permission from the supervisor, one, Mr. Odhiambo to go for treatment and this was granted. He was treated and discharged on the same day at Kapsabet District Hospital.

When the claimant resumed work on 9th July, 2015 he was referred to the company managers to whom he explained and demonstrated his situation and was advised to resume work on the following day. He was treated to a game of going round circles every time he reported to work until the 17th July, 2015 when his services were terminated on grounds of absconding duty between 8th to 17th July, 2015. He requested for but was not offered any reason for termination but was told to go and never come back.

The claimant's further case is that the termination offended Section 41, 44 and 45 of the Employment Act. He prays as follows;

a. *2 months pay in lieu of notice*

Basic salary x 2 months.....Kshs. 20,754/-

b. *Severance pay*

30 days x yrs worked x basic/30 days

30 days x 15 yrs x 9024.15/30 days.....Kshs. 135,362.25/-

c. *House allowance for entire period*

15 % basic x months worked

1353.62 x 180 months.....Kshs.243,651.6/-

d. *Compensation for unfair termination*

Gross pay x 12 months

10,377 x 12.....Kshs.124,524/-

TOTAL CLAIM.....KSHS. 524,291.45/-

In the penultimate he prays for;

- a. *Declaration that the claimant's services were unprocedurally, unlawfully and unfairly terminated.*
- b. *Kshs. 521,586/-.*
- c. *Cost of this suit and interest to court rates from time of filing the memorandum of claim until payment in full and*
- d. *Certificate of service as per Section 51 of the Employment Act.*
- e. *Any other further and better relief the Honourable Court may deem just and fit to grant.*

The respondent's case is that it is a member of the Kenya Tea Growers Association and has entered into a Collective Bargaining Agreement (CBA) with Kenya Plantations & Agricultural Workers Union (KPAWU). He admits being the employer of the claimant as defined. However, the respondent contends that the claimant was dismissed for absenteeism as he never sought permission to be away between 8th July, 2015 to 17th August, 2015 as alleged and claimed.

It is the respondent's further case that she allocates duty on a daily basis and in the instant case, the claimant was not allocated any work between 7th July, 2015 to 17th July, 2015 due to his absence. There was no evidence of illness or even permission and the claimant was therefore asked to explain this absence but failed.

The claimant was on resumption of duty subjected to disciplinary proceedings and dismissed with payment of all his terminal benefits including leave dues and therefore no claim suffices in this respect.

This matter came to court variously until the 10th February, 2016 when it was heard with the parties testifying in support of their respective cases.

The issues for determination therefore are;

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

The 1st issue for determination is the termination of the employment of the claimant wrongful, unfair and unlawful. At the hearing of this matter the claimant testified and reiterated his case as spelt out in the claim. He denied absconding from duty or even being issued with a notice or show cause letter. He however admitted that there was a meeting between himself and the respondent but in the meeting the respondent only issued him with a letter of termination. On cross-examination, the claimant testified that he was involved and injured in a motor bike accident. He was treated at Kapsabet and was not given a sick off or bed rest. He was however at loss in explaining why he preferred attending Kapsabet Hospital and not the respondent's dispensary which was available for all workers at no pay.

On re-examination the claimant further testified that he had invited a Mr. Muriithi, Shop Steward, to the disciplinary meeting but they did not speak. It is also his testimony that he did not report the accident to the police or produce a sick sheet.

The respondent through DW1, David Ngetich testified that the claimant was under his supervision. The respondent reiterates his case and contends that the claimant did not report to work and this was reported to the Manager on 8th July, 2015. He has not returned to work to date as his evidence from annexures of daily work allocation sheets at page 15 to 31 of the list annexed to the response.

The respondent's case outweighs that of the claimant's on the veracity of the evidence adduced. There is ample evidence of substantive and procedural fairness in dealing with the termination of employment of the claimant. I therefore find a case of lawful termination of the employment of the claimant and hold as such.

On the above finding of the 1st issue for determination, the 2nd issue dissipates into nothingness. The claimant would not be entitled to the relief sought having lost on a case of unlawful termination of employment.

I am therefore inclined to dismiss the claim with orders that each party bears their own cost of the claim. This clears all the issues for determination.

Delivered, dated and signed this 24th day of May 2016.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Kirwa instructed by Mwakio Kirwa & Company Advocates for the Claimant.
2. Miss. Wachira instructed by Wachira Wanjiru & Company Advocates for the Respondent.