



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 529 OF 2014

AHMED ADDULLAHI

CLAIMANT

v

KENYA NUT COMPANY LTD

RESPONDENT

JUDGMENT

1. Ahmed Abdullahi (Claimant) commenced legal proceedings against Kenya Nut Company Ltd (Respondent) on 23 October 2014 and he stated the issue in dispute as *unfair termination*.
2. A Response was filed on 9 December 2014 and this prompted the Claimant to file a Reply to Response on 18 February 2015.
3. The Cause was heard on 5 November 2015 and 2 February 2016 and the Claimant filed written submissions on 19 February 2016. The Respondent filed its submissions on 15 March 2016.
4. The Court has considered the pleadings, evidence and submissions and identifies the issues for determination as, *whether the termination of the Claimant's employment was fair and appropriate remedies*.

Whether termination was fair

Procedural fairness

5. The Claimant during testimony stated that on 3 September 2014 he was found with matumbo and kidneys during a search after work and was taken to the office and accused of theft. He stated that he made explanations and that a hearing was held on 9 September 2014.
6. The Claimant appeared to suggest that the process followed by the Respondent was tainted because he was not informed in advance of the allegations, not afforded sufficient time to prepare for the hearing and also because he was not accorded a right of appeal.
7. The Respondent produced minutes of the hearing held on 9 September 2014 and the same indicate that a Union representative was part of the hearing.
8. Section 41 of the Employment Act, 2007 provides for the basic ingredients of procedural fairness. A right of appeal is not one of the statutory essentials. The Claimant did not suggest that there was a contractually agreed right of appeal.

9. The sufficiency of time to prepare for a disciplinary hearing depends on the circumstances of each case.

10. In the present case, the Claimant recorded an investigatory statement on 3 September 2014 and an oral hearing was held on 9 September 2014. The Claimant did not demonstrate that the 6 or so day's interlude was not sufficient or any injustice or prejudice suffered.

11. The Claimant was well aware of the allegations to confront from 3 September 2014 when he recorded the statement, and the hearing was held about a week later on 9 September 2014.

12. The Court is satisfied on the basis of the Claimant's testimony and the minutes of the hearing that the Respondent complied with the statutory requirements as to procedural fairness as envisaged under section 41 of the Employment Act, 2007.

13. The dismissal was procedurally fair.

Substantive fairness

14. An employer has an onerous burden to discharge in disputes of unfair termination of employment courtesy of sections 43, 45 and 47 of the Employment Act, 2007. The employer must prove the reasons for dismissal, that the reasons are valid and fair and that its action was justified.

15. The reasons given for the termination of the Claimant's employment was *taking company properties without lawful permission*.

16. The Claimant in his testimony stated that he was given the 2 pieces of kidney which the Respondent never used to sell. However, he did not disclose the identity of the person who gave him the kidneys during examination in chief but named the person during cross examination as a supervisor called Ken.

17. The said Ken was called to testify by the Respondent. He denied given the Claimant the kidney and stated that records were kept of the meat given to the employees.

18. The said Ken and Respondent's security officer stated during testimony without being challenged that the Claimant had initially claimed he had been given the meat by a Meat Inspector, but when challenged that the Inspector was not an employee of the Respondent, he changed tune and alleged Ken had given him the meat.

19. The minutes of the hearing on 9 September 2014 indicate that the Claimant accepted that he had the kidneys.

20. The factual question then remains whether he lawfully had the meat.

21. Considering the minutes and the testimony by the Respondent's two witnesses, the Court finds that it is more probable that the Claimant took the kidneys without lawful authority.

22. Theft is one of the reasons envisaged by section 44 of the Employment Act, 2007 as a ground for dismissal.

23. The Court is satisfied on the basis of the material placed before it that the Claimant took the Respondent's property without authority and the Respondent has proved as much.

24. In effect, the Respondent had and has proved valid and fair reasons to dismiss him.

25. The dismissal was substantively fair.

Appropriate remedies

Earned wages

26. This head of claim was abandoned.

Pay in lieu of notice

27. This head of claim was also dropped.

Overtime

28. No contractual or statutory basis for this relief was demonstrated and it is declined.

Severance pay

29. The Claimant was not declared redundant and is not entitled to severance pay, as defined by statute.

Compensation

30. With the conclusion that the dismissal was fair, compensation pursuant to section 49 of the Employment Act, 2007 is not applicable.

Conclusion and Orders

31. Arising from the foregoing, the Court dismisses the instant Claim with no order as to costs.

Delivered, dated and signed in Nakuru on this 3rd day of May 2016.

Radido Stephen

Judge

Appearances

For Claimant
Co. Advocates

Messrs Muthanwa & Opar instructed by Muthanwa &

For Respondent

Mr. Ngeno instructed by Kaplan & Stratton Advocates

Court Assistant

Nixon