



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 935 OF 2014

MOSES NJENGA.....CLAIMANT

VERSUS

BESHMON LIMITED.....RESPONDENT

JUDGMENT

1. The claimant in his memorandum of claim filed on 5th June, 2014 averred that he was employed by the respondent on 9th February, 2012 as a security officer at a salary of Kshs.11,000/= per month. He worked until 3rd July, 2013 when by a letter of even date he was suspended for 1 week with no pay on allegations that he had been entertaining stampers and passersby during working hours thereby endangering the security of the respondent's premises. He denied these allegations and further denied ever receiving any warning or show cause letter.
2. The respondent in its memorandum of response averred that it issued the claimant with a show cause letter which the claimant refused to respond to. According to the respondents the claimant was further invited for a meeting to discuss the issue but failed to show up. The respondent averred that on 7th June, 2013 it issued an internal memo to the claimant warning him that he was spending too much time talking to passersby and letting them crowd the entrance to respondent's premises. According to the respondent, after all these chain of events, the claimant was lawfully and procedurally suspended on 3rd July, 2013.
3. During the trial, the claimant stated that on 3rd July, 2012 he was asked to report to head office and when he did he was told that he had some charges to answer and given a suspension letter by the receptionist. He stated that he was accused of entertaining strangers and talking too much while at work. He returned from suspension after ten days but was advised to come back after three days but when he did so, he could not be allowed to access his work place. He was informed verbally that his services had been terminated. He denied the accusations against him and further stated that he was never called for any disciplinary hearing. He denied receiving the warning and show cause letter attached to the memorandum of response.
4. The respondent's witness, Mr. Amos Away testified that the respondent was earning Kshs.11,000/= per month which was inclusive of house allowance. According to him the claimant used to leave his work station unmanned and go and chat in groups away from the gate. He further stated that some sockets got lost and the claimant was transferred to lavington to allow for investigations.
5. According to him, the claimant was issued with a show cause letter over his conduct and was suspended after the chain of events. The respondent never got responses to the suspension and show

cause letters. He stated further that the claimant was never issued with a termination letter. It was his evidence that by the time of termination, the claimant had 25 days of leave and that he had worked for only 3 days in July. He denied the respondent ever deducted any money from employees on account of uniform. He further stated that no disciplinary hearing was conducted.

6. The Employment Act makes provisions on reasons and procedure for termination of employment. A termination that does not conform to the Act will be deemed wrongful and or unfair.

7. The claimant does not deny receiving the suspension letter. The letter accused him of entertaining strangers and passersby during work period. He was to remain on suspension for one week and was required to report back thereafter for further decisions on his conduct.

8. From the evidence, it has been conceded by the respondent that no meeting was called thereafter to discuss the claimant's conduct and at which he was called upon to defend himself either alone or through a representative of his choice.

9. Neglect of duty as alleged against the claimant may well be a good reason for dismissal however the process of dismissal must be carried out through a fair procedure. The claimant herein as has been admitted was neither afforded a hearing nor was he issued with termination letter. This is contrary to the provisions of section 41 and 45 of the Employment Act hence unfair. The Court therefore so finds and awards the claimant as follows:-

Kshs.

- a. Salary for 3 days in July.....1,100.00
- b. One month's pay in lieu of leave.....11,000.00
- c. One month's pay in lieu of notice.....11,000.00
- d. Six months salary as compensation for unfair
- e. dismissal.....66,000.00

89,100.00

- e. Certificate of service
- f. Costs of the suit

10. It is so ordered.

Dated at Nairobi this 17th day of June 2016

Abuodha Jorum Nelson

Judge

Delivered this 17th day of June 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge