



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 1718 OF 2014

RONALD KEGOME OMINDO.....CLAIMANT

VERSUS

EXPRESS AUTOMATION LTD.....RESPONDENT

JUDGMENT

1. The claimant herein was employed by the respondent as a technician on 2nd January, 1998 drawing a salary of Kshs.61,282/= per month. His services were terminated on 3rd July, 2014.
2. He averred that he worked for the respondent with respect and loyalty yet the respondent wrongfully and unfairly terminated his services. The respondent further refused to pay his terminal dues.
3. The respondent on the other hand averred that the claimant's services were justifiably terminated on account of negligence and failure to diligently carry out his duties and responsibilities.
4. According to the respondent the claimant was prohibited from engaging in personal business that was similar to the respondent while still in the latter's employment yet the claimant engaged in such business. The respondent was therefore justified in terminating his services.
5. In his oral testimony in Court, the claimant stated that he was stopped from working without notice and according to him, he did nothing wrong. In cross-examination he stated that he was informed by the respondent that the latter had information that he was working elsewhere at the same time as for the respondent. He admitted that his contract prohibited him from selling products of rival companies. He denied knowledge of Boston Forex Bureau and further denied ever doing any sales since his job was a technician.
6. The respondent's witness Ms. Sylvia Wachira testified that the claimant was summarily dismissed because the respondent found an invoice signed by the claimant in which he sold a similar product from a different company. According to her the claimant apologized but the respondent felt the apology was not enough and dismissed him.
7. Upon dismissal the respondent offered to pay him his dues including severance pay upon clearance. According to her, the respondent was called severally to collect his dues but refused to show up. In re-examination she stated the respondent offered to pay the claimant Kshs.600,000/=

which comprised of severance pay at 15 days pay for each complete year of service.

8. The respondent attached and apology letter in which the claimant appeared not to have unequivocally apologized for the accusations against him. It would seem in the letter that the apology was conditioned on the respondent's thinking that the claimant was engaged in business conflicting with his employment with the respondent.

9. The respondent did not exhibit or produce the invoice from a rival company allegedly signed by the claimant.

10. As stated in several judgments of this Court, employment relationship is a personal relationship hence grounded on trust. Once the trust is lost, the relationship may not smoothly continue and the option usually is separation. The separation from employment must however be for valid and or justifiable reasons the burden of proof of which rests on the employer.

11. Central to the reason for which the claimant was summarily dismissed was the invoice from a rival company allegedly signed by the claimant. It was important that it was either exhibited or an agent of the company (Boston Forex) was called to give evidence regarding the same. Failure to do so leads to the conclusion that the respondent failed to prove reason for terminating the claimant's services as required by law. The Court therefore reaches the inevitable conclusion that the claimant was unfairly terminated from employment.

12. The Court therefore awards the claimant as follows:-

Kshs.

(a) One month's salary in lieu of notice.....61,281.00

(b) Ten month's salary as compensation

for unfair dismissal.....612,810.00

674,091.00

13. Considering the respondent had made an offer to settle the claim which was not taken up by the claimant, the Court will make no order on costs.

14. 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