



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT

NAKURU

CAUSE NO. 377 OF 2013

PETER WANJEMA MWIGI.....CLAIMANT

v

RAIPLY WOOD (K) LIMITED.....RESPONDENT

JUDGMENT

1. Raiply Wood (K) Ltd (Respondent) dismissed Peter Wanjema Mwangi (Claimant) through a letter dated 24 May 2011. The reason given in the letter was absence from duty without leave, which according to the Respondent was gross misconduct.
2. The Claimant was aggrieved and he commenced legal proceedings against the Respondent on 6 November 2013 alleging unlawful termination of employment.
3. The Respondent filed a Reply to Statement of Claim on 17 December 2013.
4. On 28 November 2014 the Claimant filed an *Amended Statement of Claim* and this prompted the Respondent to file an *Amended Reply to Amended Statement of Claim* on 14 August 2015.
5. The Cause was heard on 19 October 2015 and 9 December 2015.
6. The Claimant filed his submissions on 13 January 2016, while the Respondent's submissions were filed on 19 February 2016.
7. The Court has considered the pleadings, evidence and submissions and adopts the issues for determination as outlined in the submissions, to wit, *whether the dismissal of the Claimant was unfair and appropriate remedies*.
8. But first some background on undisputed facts.

Background

9. The Claimant was employed by the Respondent in 1998 and he was a member of the Kenya Building, Construction, Timber Furniture & Allied Industries Employees Union which had a collective bargaining agreement with the Respondent.
10. On 21 October 2010, the Respondent issued to the Claimant a 2 month redundancy notice. The redundancy notice was revoked through a letter dated 22 December 2010.

11. On 3 February 2011, the Respondent issued yet another 2 month redundancy notice to the Claimant due to *increased operational costs*. The effective date of redundancy was stated as 3 April 2011.

12. However, the Respondent again revoked the redundancy notice through a letter dated 6 April 2011, and on the same day, the Claimant was informed that he had been transferred to the Block Board department.

13. The Claimant did not report to the new department, and on 12 April 2011, the Respondent issued a first warning letter for the absence. A second warning letter was issued on 4 May 2011, and this was followed with a show cause notice on 19 May 2011. The Claimant was given until 23 May 2011 to show cause why he should not be dismissed.

14. The show cause notice was not served upon the Claimant as he had not reported on duty from 7 April 2011.

15. Come 24 May 2011, the Respondent informed the Claimant that he was being dismissed for unauthorised absence from 7 April 2011.

Whether dismissal was unfair

16. The Claimant's contention was that his employment was terminated on account of redundancy, while the Respondent's case is that the redundancy was revoked and the Claimant was dismissed for unauthorised absence after the inter-departmental transfer.

17. The clue to unravelling whether the relationship ended on account of redundancy or dismissal for absence will depend on whether the Claimant was informed of the revocation of the redundancy notice and interdepartmental transfer.

18. Both the letters revoking the redundancy notice and inter-departmental transfer are dated 6 April 2011.

19. The Claimant denied receiving the transfer letter. The transfer letter does not have the Claimant's address. He stated that he worked up to 3 April 2011.

20. The Respondent's Human Resources Manager testified that the transfer was upon the Claimant's own plea after a meeting involving the Union's Branch Secretary and shop stewards. He did not disclose how and or who served the transfer letter upon the Claimant. He also stated that attendance records were available but had not been produced in Court.

21. The Respondent's second witness testified that he used to see the Claimant in the work place after 3 April 2011, but he was not sure whether the transfer letter was delivered to him.

22. The third witness did not disclose whether he knew if the transfer letter was delivered to the Claimant.

23. The witness also stated that the Respondent kept attendance records.

24. With the records not made available to the Court, it is not possible to determine whether the Claimant had continued to enter the work place after 3 April 2011.

25. The letter revoking the redundancy and the transfer letter were written after the effective date of redundancy.

26. Considering that there is no evidence placed before Court to demonstrate that the Claimant continued attending work after 3 April 2011, or that the letters were delivered to him or the Union (both letters were not copied to the Union), the Court can logically conclude that the employment of the Claimant was terminated on account of redundancy and ended on 3 April 2011.

(d) Compensation

Kshs 97,841/-

TOTAL

Kshs 307,011/-

38. Claimant to have costs.

Delivered, dated and signed in Nakuru on this 15th day of July 2016.

Radido Stephen

Judge

Appearances

For Claimant Mr. Kariuki instructed by Kariuki Mwaniki & Co. Advocates

For Respondent Ms. Nasiloli instructed by Kalya & Co. Advocates

Court Assistant Nixon/Mwangi S.