



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NUMBER 1008 OF 2014

ZABLON OMECHI ONSOMU.....CLAIMANT

VERSUS

TRI CLOVER INDUSTRIES (K) LTD.....RESPONDENT

JUDGMENT

1. The claimant pleaded that he was employed by the respondent as Production Manager on 29th May, 2010 at a salary of Kshs.35,000/= which was later enhanced to Kshs.100,000/= by the time his services were terminated. According to the claimant his services were suspended on 20th March, 2014 to allow investigation on allegations of production loss. He was finally terminated on 26th March, 2014.

2. According to the claimant, he never received a warning letter in the entire period of his engagement hence he deemed the termination unfair. The claimant further averred that the respondent terminated his services without inviting him for a hearing to show cause why he should not be terminated. He further complained that upon termination the respondent refused to pay him his terminal dues. The claimant therefore sought judgment against the respondent in the sum of Kshs.3,085,000 which consisted of three months pay in lieu of notice, salary for April, 2014, salary for the remainder of the contract, pro rata leave and 12 months salary as compensation for unfair termination of employment.

3. The respondent on the other hand pleaded that the claimant's last contract was terminated by mutual consent between the parties. It was the respondent's contention that the claimant's engagement as manager in the production unit was by virtue of his professional qualification and experience. The respondent therefore relied on the claimant's professional qualification and rich experience when engaging him.

4. According to the respondent, while in the course of his employment, the claimant introduced a new product namely Tomato Sauce and Chilli Sauce. This product received a lot of negative reaction in the market and by December, 2013, there were complaints, rejection and returns of the product in large quantities. The rejection was due to the market's perception of low quality and substandard nature of the product. It was the respondent's position that by dint of the claimant's duties and responsibilities when there was negative reason in the market, the claimant took responsibility.

5. The respondent further pleaded that on 26th March, 2013 the claimant was suspended from employment to allow investigation into the production loss of the new product. Further the claimant was

informed to report to the respondent's management on 31st March, 2014. On this date, the respondent's management wrote to the respondent requesting him to show cause within 48 hours with regard to the said loss of production. The claimant responded but according to the respondent, the claimant gave excuses instead of explaining the loss. The respondent considered the claimant's response unacceptable and on 30th April, 2014 both the respondent and the claimant had a meeting where it was mutually agreed that the claimant's contract be terminated for poor performance and his terminal dues paid to him.

6. In his final submission, Mr. Nyabena for the respondent submitted that the respondent completely failed to prove that it had a valid reason to terminate the claimant employment. According to Counsel, the evidence on record showed the claimant was not in any way responsible for the defects in the product produced since the respondent had designed a mixing tank without consultation despite communicating with them. According to Mr. Nyabena, the highlights of the claimant's response was that he was not the one to blame for the alleged production loss. The claimant at all times acted professionally. Counsel further submitted that the explanation given by the claimant was completely ignored and was never taken into account when the decision to terminate his services was taken.

7. Mr. Ouma for the respondent on his part submitted that the engagement of the claimant as manager in the production unit was singularly predicated on his professional experience. The respondent therefore relied on his professional qualification and rich experience when engaging him. According to counsel therefore, the implication of the contract is well as job description were such that where there was negative reaction in the market, the claimant took personal responsibility in respect of the product developed.

8. Regarding process, counsel submitted that the decision to terminate the services was not unilaterally done but rather followed a substantially all inclusive process and procedure where the claimant was afforded an opportunity to defend himself but failed to give any compelling reason why he could not bear the responsibility for the loss besides the termination was by mutual consent.

9. Counsel further submitted that the claimant is not entitled to three months salary in lieu of notice and salary for April as these were paid to the claimant upon termination. Counsel similarly submitted regarding claim for untaken leave.

10. The question the Court needs to decide in this dispute is whether their existed valid reasons for terminating the claimants services by the respondent.

11. The respondent has vehemently contended that the claimant was hired based on his professional training and experience in production. According to the respondent any negative feedback or compromise in quality of products which he supervised made him solely blameworthy. It was the respondents position therefore that the negative feed of the newly launched Tomato and Chilli Sauces which led to production losses was to blame on the claimant.

12. Where a person is hired solely based on his or her professional training and experience a heavier duty is placed on such a person to exercise utmost care and skill in carrying out the task for which he was hired. However, before blame is assigned, it must be evidently clear that a reasonable person with similar expertise and experience would have not omitted to arrest or mitigate a defect reaching the market.

13. Whereas the respondent fixed the blame on the claimant, the claimant shifted it to the design of the mixing and cooling tank which he complained were in one place and which design he argued was defective. The Court did not have the benefit of oral evidence to explore this issue further since the parties opted to dispose of the suit by written submissions.

14. By a letter dated 30th April, 2014 the parties herein appear to have mutually agreed to part ways. This letter was attached as part of the claimant's bundle of documents. It was signed by the claimant as an acknowledgment and confirmation that the contents were in order. No allegation of coercion or fraud or misrepresentation was raised against the letter by the claimant. The Court therefore finds it dishonest for the claimant to turn around and claim that his separation from the respondent was unfair. If the claimant

was not happy with the intended separation, nothing prevented him from refusing to sign the letter and seek legal advice as he did when he filed the present suit.

15. Concerning claim for payment in lieu of notice, salary for April and remainder of the contract, the Court is satisfied from the payslips attached that these were paid upon termination of the claimant's services.

16. In conclusion the Court finds the claim unmerited and dismisses the same with costs.

17. It is so ordered.

Dated at Nairobi this 23rd day of September 2016

Abuodha Jorum Nelson

Judge

Delivered this 23rd day of September 2016

In the presence of:-

.....for the Claimant andclaim unmerited and dismisses

.....for the Respondent.

Abuodha Jorum Nelson

Judge