



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 97 OF 2015

JACK WASWA WANYAMA.....CLAIMANT

VERSUS

PUNCHLINES LIMITED..... RESPONDENT

JUDGMENT

- 1.The claimant pleaded that he was orally employed by the respondent as an Assistant Supervisor on 29th March, 2007 at a gross salary of Kshs.20,535/= including house allowance.
2. He worked until 29th September, 2014 when his services were terminated on account of delay in performing an assignment allocated to him leading to disappointment by the respondent's client. According to the claimant he was unfairly blamed for the delay since the issue was beyond his control.
3. Prior to dismissal on 29th September, 2014 at around 10.00 a.m. he alleged he was issued with a backdated warning letter dated 25th September, 2014 warning him to refrain from unbecoming behavior. At around 11.00a.m. on 29th September, 2014 he was called for a hearing for which he was never notified in advance. He was dismissed thereafter.
- 4.The respondent on its part refuted the claim and averred that on 24th September, 2014 the claimant was assigned by the General Manager to work on an order for tailor made plain papers from an Ethiopian client and informed they would be collected at 12.00p.m. on the same day. At 12.00p.m the claimant sought to be given two more hours to complete the assignment ostensibly because there was delay occasioned by lack of papers which according to the respondent was not true as the papers were obtainable from a related company within the yard. On completion of the work, the claimant packaged the papers representing to the client that the full order was satisfied. On reaching Ethiopia, the client called complaining over the quantity despite the fact that the client had paid in advance.
5. Further on 19th September, 2014 the claimant was tasked with printing 5,000 Commercial Bank of Africa brochures and delivery before 26th September, 2014. On 28th September, 2014 the Bank's representative received only 350 brochures and called to cancel the rest of the order due to delay in delivery since the brochures were tailor made to a specific function at Kenyatta University.
6. According to the respondent the above failures or neglect by the claimant to carry out his duties leading to actual loss of cash and massive loss of business and reputation to the respondent, the claimant was on 26th September, 2014 formally summoned to a disciplinary hearing on 29th September, 2014 and was

requested to be accompanied by any member of staff of his own choice.

7. At the hearing, the claimant admitted liability for the delay and cancellation of the orders and after deliberations the committee recommended his dismissal and also informed the claimant of his right to appeal.

8. In his oral testimony in Court the claimant repeated his averments in the memorandum of claim and further stated that upon termination he was paid one month's salary in lieu of notice.

9. In cross-examination he denied ever being an Assistant Supervisor and that he was never issued with a letter appointing him as such. His work was bindery and he would perform work allocated to him. According to him the supervisor was a Mr. Maritim. He admitted having been warned before to take his work seriously.

10. The respondent's witness Mr. Maritim testified that the claimant was hired in 2007 initially as a general worker. He later became the head of binding section and by the time of dismissal he was an Assistant Supervisor. According to Mr. Maritim, the work for CBA Bank was for brochures for promotion over the weekend at Kenyatta University. The work was assigned to him as the supervisor. They planned together with the claimant how the work would be done and he thereafter proceeded on leave. The claimant who was his assistant became in-charge.

11. The respondent's second witness was Mr. Musya who informed the Court he was the respondent's Human Resource Officer. He stated that he reviewed the claimant's file and was informed that the claimant was dismissed for failing to properly discharge his duties.

12. In cross-examination he stated that the claimant was not issued with a letter appointing him as a supervisor.

13. There was no dispute that the order by CBA Bank was not fully serviced leading to its cancellations after the delivery of some 500 brochures. The claimant does not deny that he was responsible for the servicing of the order. He only states that he was not to blame for the delay. He denied he was an Assistant Supervisor but he admitted that Mr. Maritim (RW1) was his supervisor. Mr. Maritim informed the Court that the order in issue was assigned to him and he discussed the same with the claimant who was his assistant and planned the work before proceeding on leave. This part of the evidence was not disputed by the claimant.

14. On a suit for termination of employment, the burden of proof of reasons for termination lies on the employer. The respondent both by the documents in support of the claim and by oral evidence in Court sufficiently showed, and it was not denied by the claimant, that the CBA Bank's order was cancelled due to delay. Cancellation obviously occasioned loss since the respondent had by the time of cancellation prepared material tailor made for the customer's needs.

15. In employment relationship the employee owes the employer duty of care and skill. Breach of this duty is a valid and justifiable reason for dismissal.

16. As observed, from the material laid before me, I am persuaded that there existed valid reasons for terminating the claimant's services and that the termination was carried out through a fair procedure.

17. The claim is therefore found without merit and is hereby dismissed with costs.

16. It is so ordered.

Dated at Nairobi this 14th day of October 2016

Abuodha Jorum Nelson

Judge

Delivered this 14th day of October 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge