



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 626 OF 2014

CHRISTOPHER KEMBOI MUREI

CLAIMANT

v

LAMINATE TUBE INDUSTRIES LIMITED

RESPONDENT

JUDGMENT

1. Christopher Kemboi Murei (Claimant) contends that Laminate Tube Industries Ltd (Respondent) unfairly terminated his employment on 2 October 2013. The Respondent asserts that the termination of employment was lawful.
2. The Cause was heard on 4 October 2016 when the Claimant testified, and on 12 October 2016 when the Respondent's Human Resources and Administration Manager testified.
3. The Claimant filed his submissions on 17 October 2016, while the Respondent filed its submissions on 25 October 2016.
4. The Claimant identified 4 issues for determination by the Court.
5. The Court has given due consideration to the material placed before it including the authorities.

Law on unfair termination

6. In legal proceedings relating to complaints of unfair termination of employment, a Claimant is at the first instance expected to establish that an unfair termination of employment occurred before the Respondent/employer is called upon to demonstrate that termination of employment was justified.
7. That is the requirement of section 47(5) of the Employment Act, 2007.
8. The obligation upon the Claimant at this stage is a low threshold one and the obligation can be satisfied by showing that no written notice in terms of section 35 of the Employment Act, 2007 was given or that no hearing as contemplated by section 41 of the Act was conducted.

9. Once a Claimant has satisfied the test, the Respondent would be called upon to justify the termination of employment (section 47(5) of the Employment Act, 2007), prove the reasons for the termination of employment (section 43 of the Act) and prove the reasons as valid and fair (section 45 of the Act).

Evidence before Court

10. In the present case, the Claimant in his very brief testimony did not even attempt to lay an evidential

foundation as to why he was contending that the termination of his employment was unfair.

11. As the Court has already alluded to, the burden is a low threshold one, but unfortunately, the Claimant miserably failed to meet the test.

12. Having failed to establish that an unfair termination of employment occurred, the Court must stop its inquiry at this stage.

13. Before concluding the Court wishes to make a comment about an authority cited by the Respondent. In the case, *Joseph Muthama Ndambuki & 4 Ors v Delmonte (K) Ltd* (2012) eKLR, the Court did not appear to consider the legal implications of sections 41, 43, 45 and 47(5) of the Employment Act, 2007 before endorsing the validity of the old jurisprudence as to termination of employment at the will of the employer.

14. In any case, the applicable law in the *Ndambuki* case was the Employment Act, cap. 226 (repealed) and the common law, which is not the case here.

Appropriate remedies

Wages for October 2013

15. The Claimant sought Kshs 11,229/75 on account of unpaid wages for October 2013.

16. Among the documents filed in Court by the Claimant was a final dues schedule which indicate that he was paid October 2013 wages.

17. Conveniently, the Claimant failed to produce the document as an exhibit or make any reference to it.

18. This head of relief cannot hold.

Pay in lieu of notice

19. The same schedule referred to in the preceding paragraphs show the Claimant was paid the equivalent of 1 month pay in lieu of notice.

20. Even this relief cannot be sustained on the facts.

Gratuity

21. Gratuity of Kshs 24,413/- was also paid according to the final dues schedule and therefore does not lie.

Wages for 1 day worked in November 2013

22. Under this head, the Claimant sought Kshs 374/30. He is entitled to the same as of right.

Compensation

23. With the conclusion on the question of unfairness of termination of employment, this discretionary remedy is not available to the Claimant.

Conclusion and Orders

24. The Court finds and holds that the Claimant has failed to establish that an unfair termination of employment occurred, and thus save for the 1 day wages for November 2013, the Cause herein is dismissed with costs to the Respondent.

