



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NUMBER 65 OF 2011

GODFREY ANJERE..... CLAIMANT

VERSUS

UNIQUE SUPPLIERS LIMITED.....RESPONDENT

JUDGMENT

1. The claimant in this matter avers that he was employed by the respondent in September, 2004 as a gardener at a monthly salary of Kshs.12,500/= . His appointment was verbal.
2. He worked until 15th February, 2010 when he claims the respondent terminated his services verbally and refused to pay him his terminal dues.
3. The claimant avers that although he was hired as a gardener, he used to be assigned other duties including taking care of the company's dogs, and goats and also acting as a security guard.
4. He claimed that he worked with loyalty and diligence but the respondent failed to appreciate his services and went ahead and dismissed him in February 2010 without notice.
5. The claimant therefore sought from this Court an order for compensation for wrongful and unfair termination of employment which included 3 months' salary in lieu of notice, leave pay for 2008 and 2009, salary for ½ month of February, Gratuity for six years, overtime and general damages for unlawful termination of employment equivalent to 6 months pay.
6. The respondent on its part disputed the claimants claim stating that it did not terminate claimant's services but rather it was the claimant who deserted work on 15th February 2010. For this reason, the respondent refutes that the claimant is entitled to any pay or benefit.
7. In his evidence at the trial, the claimant stated that in 2005 the respondent was undertaking construction and he was asked to serve as a foreman and also to take care of the dogs.
8. It was his testimony that his boss Mr. Munir took issue with a leaking pipe for which he was blamed for not repairing yet he was not a plumber. He further stated that the personnel Manager

and the Director asked him to tender his resignation accusing him of failing in his duties. He complained that the respondent's director threatened to shoot him if he appear at the respondent's premises again after dismissal. He reported the threat to the police and his dismissal to the Labour Office.

9. In cross-examination he denied receiving the letter dated 15th February, 2015 accusing him of insubordination. The claimant further denied deserting work. He admitted being paid leave for 2008 and not for 2009.

10. The Claimant called a Mr. Joseph Machoka who testified that they used to work with him and that the claimant used to open and close the gate day and night and used to cook for the dogs. It was his evidence that when the claimant was dismissed he was called to take up the claimant duties.

11. The respondent on its part called two witnesses Mr. Kennedy Barake and Shafique Abdallah. According to Mr. Barake, who stated he was the respondent's Personnel Administration Manager, the claimant worked for the respondent as a gardener. He was hired in 2004 at a salary of 4,985/= and he left on 15th February, 2010 at a salary of Kshs.12,500/=. According to me Barake, the claimant was initially humble and obedient but later became stubborn often displaying bad temper for which he was issued several warning letters. The claimant once fought a fellow employee and was once involved in loss of paint.

12. It was further his evidence that the claimant was hired on 1st August, 2006 and issued with a letter of appointment. He was hired as a gardener but his duties could be altered at the discretion of the management. He denied receiving any claim for overtime from the claimant.

13. On 15th February, 2010 he was asked by the Managing Director to go to Kiambere Road where the claimant worked as the claimant was causing problems there. When he met the claimant he told him he was resigning. Asked for the letter of resignation, the claimant said it was in the house and went to collect it. According to Barake the claimant returned carrying a bag and instead said as a soldier he had marched out of the gate. The claimant shouted abuses as he left. It was his evidence that due to the claimant's behavior, they reported the incident to Capital Hill Police Post which was nearby.

14. According to Mr. Barake, the respondent does not refuse paying the claimant Kshs.12,500 on account of leave, salary for half February 6,500 and salary in lieu of notice at Kshs.12,500. Mr. Barake however stated that the respondent is not entitled to notice money because he deserted work. Concerning gratuity, Mr. Barake stated that the claimant was not entitled to this as he was a contributor to National Social Security Fund (NSSF). This was evidenced on the claimant's salary vouchers.

15. Mr. Abdallah on his part testified that he received a call from the claimant saying he wanted to leave work since he had a misunderstanding with the CEO. It was his evidence that he told the claimant that if he wanted to leave work he should resign. The claimant never resigned but instead left hurling insults at him and Mr. Barake. The claimant later returned on a motorbike shouting and insulting other staff.

16. According to Abdallah the claimant was issued with the show cause letter through his wife and reported the incident to the police. Mr. Abdallah confirmed that the respondent is willing to pay the claimant his dues as computed by Mr. Barake but the claimant has never gone for them. Mr. Abdallah denied threatening the claimant with a gun. He stated that he has recorded statement with the police concerning the incident but nothing has taken place.

17. In her final submissions to Court, Ms. Rashid for the claimant stated that the claimant was performing more duties than just a gardener and was entitled to higher pay than what was being offered. On the issue of unlawful termination, counsel submitted that the respondent's director

overreacted over the issue of leaking pipe and dismissed the claimant and threatened to shoot him.

18. Respondent's counsel, Mr. Chege on the other hand submitted that the claimant did not call any witness to confirm his allegation that he was chased away from his place of work. According to counsel, the claimant deserted work on 15th February, 2010 the same day he was issued with a letter seeking explanation from him why he deserted work.

19. Counsel further submitted that the claimant's letter of appointment clearly stated he was employed as a gardener. Regarding overtime, counsel submitted that the claimant is not entitled to this since he never worked overtime and that the claimant did not produce any documents to support this claim. Regarding damages for unlawful termination, counsel submitted that the claimant is not entitled to this remedy since he deserted work.

20. I have reviewed the pleadings and evidence in this matter including testimony by witnesses on either side. This case presents to me a very acrimonious employment relationship whose termination attracted other aspects such as police report and investigations over allegations of threat to shoot the claimant. I will not make any further comment or delve into this aspect since I lack the jurisdiction at the moment to do so.

21. As stated severally before by this Court, employment relationship though contractual is personal and thrives on the premise of confidence and trust. Once one or both of these aspects is irreparably eroded or lost the relationship cannot continue and has to be terminated in accordance with the law.

22. It is not in dispute that the claimant left his employment with the respondent. What is disputed is whether he was terminated or he absconded duties. In this regard no termination letter was produced but the respondent alleged that the claimant upon being issued with the letter dated 15th February, 2010 asking him to show cause why he should not be disciplined for gross misconduct and insubordination, the claimant left. This letter was not given to the claimant directly but through his wife.

23. It was in evidence that the claimant never returned to the respondents premises after he left on 15th February, 2010. The chances are therefore high that he either did not get the letter at all or immediately. But absence from work without lawful excuse or permission is gross misconduct which can lead to summary dismissal. Apart from allegations that he would be shot by the respondent's CEO, the claimant did not call any witness or produce evidence of attempt to resume work which were refused by the respondent.

24. The respondent on the other hand did not produce any evidence or letter to the claimant asking him to show cause why he should not be dismissed for absconding duties.

25. In a dismissal on account of absconding duties, the employer is required to show what steps it took to inform the employee that his or her dismissal would result if they did not report back to work. This is necessary to avoid any injustice to an employee who may be away from work for lawful or reasonable excuse such as illness or circumstances beyond their control and yet unable to communicate to the employer in good time.

26. To this extent the Court will declare the termination of the claimant's employment unlawful and order that he be awarded one month's pay in lieu of notice.

27. Concerning claim for overtime the Court will reject this claim as it was not proved to required threshold of proof in civil cases.

28. In conclusion the Court orders that the respondent will pay the claimant as follows:-

Kshs.

<i>(a) One month's salary in lieu of notice.....</i>	<i>12,500.00</i>
<i>(b) One month's salary on account of leave.....</i>	<i>12,500.00</i>
<i>(c) Salary for ½ of February 2010.....</i>	<i>6,250.00</i>
<i>(d) Four months' salary on account of unfair termination of employment.....</i>	<i>50,000.00</i>
	<u><i>68,750.00</i></u>

29. The respondent shall further issue the claimant with a certificate of service.

30. The claimant shall have costs of the suit.

Dated at Nairobi this 27th day of February 2015

Abuodha J. N.

Judge

Delivered this 27th day of February 2015

In the presence of:-

.....**for the Claimant and**

.....**for the Respondent.**

Abuodha J. N.

Judge