



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 165 OF 2013

JEREMIAH NGIGE MUNGAI.....CLAIMANT

VERSUS

EQUITY BANK LTD.....RESPONDENT

JUDGMENT

1. On 10th November, 2014, I directed that his matter could be disposed of by way of written submissions consequently both counsel filed written submissions.
2. According to the Claimant's Counsel, his client was dismissed from employment without any reason. Counsel concedes that his client was accused of conspiracy to steal fuel and was charged in that regard but the criminal charges were dismissed hence he could not be tried again on the same charges by the employer.
3. According to counsel, the Claimant was arraigned in the Chief Magistrates Court at Kibera on 22nd March, 2012 and immediately thereafter suspended from work and put on half pay. However, after the lifting of the suspension he was never paid the balance of his salary.
4. Counsel further submitted that since the Claimant was employed on permanent basis and his contract brought to an abrupt end, this needs to be rectified by making an order that the claimant be paid the balance of his working life up to age of 60 years. In this regard, Counsel prays that I order that the Claimant be paid Kshs.17,217,600/=.
5. In view of the fact that the claimant was summarily dismissed, which is contested, counsel submits that his client is entitled to two months wages in lieu of notice.
6. The counsel for Respondent on his part submitted that the Claimant had a responsibility to verify that the full consignment of 7,000 litres of fuel was delivered to the Respondent hence his approval of receipt of 7,000 litres of fuel without verification amounted to negligence in the exercise of the Claimant's duties which occasioned the Respondent financial loss.
7. According to counsel, although the Claimant alleged that the full consignment was delivered, it was clear from the proceedings and investigations that it could not be clearly established whether or not the consignment was fully delivered. According to counsel, the fact that there was uncertainty on whether or not the full consignment was delivered demonstrated the Claimant was negligent in the performance of his duties hence the dismissal was justified.

8. Concerning the allegations of double jeopardy, counsel submitted that the burden of proof in criminal cases is not the same standard as applied in employment matters. According to counsel every organization is entitled to its own investigative mechanisms which provides for professionalism in execution of duties.
9. Concerning dues payable, it was submitted that the Respondent fully honoured its obligations to the claimant upon the dismissal hence the Claimant was not entitled to any further sums.
10. On the issue of reinstatement, counsel submitted that a contract of employment ought to be voluntary engagement and is neither perpetual nor irrevocable hence no party to an employment contract can be compelled to continue with a contract where situations arise that make the subsistence of the relationship untenable.
11. The Claimant in his memorandum of claim prays if successful, that the Court awards him half pay for the month of March to October, 2012 when he was on suspension, at the rate of Kshs.20,000 per month. He also seeks damages as his monthly salary was brought to an abrupt and until retirement age. He further seeks two months wages in lieu of notice. Alternatively the Claimant sought reinstatements to work.
12. The Respondent on the other hand has stated that upon dismissal, the Claimant's dues were paid and his final salary for the period he was under suspension paid as well.
13. Employment relationship is not indefinite. It can be brought to an end for any lawful cause and in accordance with stipulations in the contract of employment and Employment Act. Further contracts of employment operate on trust and fidelity and once these components are eroded or lost, the relationship cannot continue.
14. The Employment Act however provides for the framework and minimum processes which must be adhered to in bringing the relationship to an end. Failure to follow the framework and minimum processes provided for in the Act would lead to wrongful and or unfair termination of employment.
15. The Claimant herein was accused of involvement in conspiracy to steal from the Respondent. He was charged in a Court of law with that offence and but acquitted after full trial. The Respondent however set in motion disciplinary process on the same matter and thereafter dismissed him for neglect of duty occasioning the Respondent financial loss.
16. From the documents filed by the Respondent and which have not been disputed by the Claimant, he was issued with a show cause letter on 1st October, 2012 and invited to attend a disciplinary hearing on 31st October, 2012. In the letter of invitation the Claimant was informed that he was allowed to be accompanied by a colleague of his choice and his right to call witnesses.
17. The letter further informed the Claimant of the points of discussion which included the show cause letter of 8th October, 2012, whether or not he was negligent in performance of his duties during the incident which led to the Respondent losing already purchased fuel amounting to 2,000 litres. The Claimant was consequently dismissed summarily on 1st November 2012.
18. The dismissal letter informed him that his response to show cause letter and explanation during the disciplinary hearing on 31st October 2012, was unsatisfactory.
19. The Respondent upon dismissing the Claimant paid him his terminal dues as evidenced in exhibit EQ 6. The payment included an item called '**pay while on suspension.**' The Claimant did not refute either by way of evidence or reply to pleadings, this payment. To this extent the Court finds the claim by the Claimant for payment of half pay from 22nd March to 23rd October, 2012

unfounded.

20. Concerning the disciplinary process, the Court is reasonably persuaded that the Respondent accorded the Claimant fair hearing and followed a fair procedure before dismissing the Claimant. This complaint is also found to be unmerited.

21. Concerning the complaint of double jeopardy, this Court has stated many times that an acquittal in a criminal trial is no bar to an internal disciplinary process. The standards of proof and considerations in the two processes are different. Proof on a criminal charge is higher than in civil cases let alone an internal disciplinary process.

22. It was not the intention of the Employment Act and indeed employment law generally that disciplinary processes take the form and rigour of a Court trial. What is important is that separation of parties to an employment contract is done fairly and within the parameters and for reasons broadly captured in the employment Act.

23. With regard to this case, I fail to find that the Claimant's contract was unfairly or wrongfully terminated in terms of reasons and procedure. The suit is therefore dismissed with costs.

24. It is so ordered.

Dated at Nairobi this 6th day of February 2015

Abuodha J. N.

Judge

Delivered this 6th day of February 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge