



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

CAUSE NUMBER 2009 OF 2012

DAVID OCHOLA OGUTU.....1ST CLAIMANT

DAVID ACHIENG ODUOL.....2ND CLAIMANT

JOSEPHAT MUTOKO.....3RD CLAIMANT

VERSUS

CENTRAL ELECTRICAL INTERNATIONAL.....RESPONDENT

JUDGMENT

1. That the claimant in this suit have brought this action claiming the respondent for unknown reasons, terminated their services. As a consequence they seek an order for compensation from the Court as particularized in their memorandum of claim.
2. When this matter came up for hearing before me only the 2nd claimant appeared and gave evidence. However, on 24th September, 2013 when the matter came up before Justice Nderi, Counsel for the claimant informed the Court that the 2nd Claimant was bereaved and further that the 3rd claimant wished to withdraw the case and that Counsel was ready to proceed with the 2nd claimants case. In view of the unexplained absence of 1st and 3rd claimant the Court will dismiss their claims for want of prosecution and proceed to determine the 2nd claimant's case only.
3. According to the 2nd claimant he was employed by the respondent in 2008 and terminated in 2012. He was employed as an electrician earning Kshs.400 per day but payable weekly. According to him he never went on leave for the time he worked for the respondent.
4. According to his testimony in Court, on 5th April, 2012 he was called by the foreman who told him and his colleagues to go and get their money but some of them including him did not get their money as they were told the money was not enough and were later asked to go away. It was his testimony that he and his colleagues were later told that their jobs were terminated. Later on, the police came and asked them to leave. He later reported the dispute to the Labour Office but were still not paid.
5. The respondent called two witnesses. DW1 testified that on the material date there was a strike and the claimants blocked others from working. He ordered the claimants to leave the premises. The claimants then went to the respondent's offices to ask for their pay but were told their

grievances could not be attended to unless they resumed work. According to DW1 the claimants persisted with their demands until late in the evening and the police had to be called to disperse them. They were consequently terminated from employment.

6. In cross examination he stated that no arrests were made as the claimants ran away when the police came. He stated that he did not discuss with the claimants their grievances. It was his evidence that the claimants had not worked for four days hence they could not be paid. It was further his evidence that the claimants were neither called by management nor were their grievances reduced into writing by them.

7. DW 2 on his part testified that on the material day at about 8.00 a.m one Patrick called and said some staff had gone on strike. He asked for their names and was given and he issued letters to terminate them. It was his evidence that the claimants were demanding to be paid their wages for the days they were on strike and therefore not worked. The claimants' blocked him from leaving the office and his colleague had to call the police to disperse the claimants.

8. In cross examination he stated that he was the project manager and never dealt with human resource issues.

9. The evidence in this matter is scanty and makes it difficult to discern what actually transpired leading to the dismissal of the claimants. What can be deduced from the little offered, was that there was a stand-off between the claimant's and the respondent over payment of their daily wages.

10. The respondent claimed such wages were not payable as the claimants had not worked for four days and that they were on strike.

11. From the pleadings, especially the memorandum of response at paragraph 8, it would seem that the claimants were in continuous engagement by the respondent for an aggregate period exceeding one month. Whereas as casuals they were entitled to a days' notice of termination of employment, the continuous engagement for an aggregate period exceeding one month meant they were by virtue of section 37 of the Employment Act entitled to one months' notice of termination of employment or payment in lieu.

12. Although the respondent claim to have summarily dismissed the claimants for participating in an unlawful strike, no record was produced by the respondent to show that the claimants were actually absent from work hence could not be paid. Further no record or minute of warning was produced to show that the claimant's dismissal was being contemplated. In the circumstances the Court finds their dismissal unfair and order that the 2nd claimant whose claim is the subject of this judgment be compensated as follows:-

Kshs.

- (a) One month's pay in lieu of notice.....12,000.00
- (b) Unpaid wages for one week.....2,800.00
- (c) Gratuity for 3 years at 30 days' pay for
each year of completed service.....36,000.00
- (d) 4 months' pay as compensation for
unfair termination.....48,000.00

TOTAL 98,000.00

13. The claimant shall have costs of the suit.

Dated at Nairobi this 19th day of March 2015

Abuodha J. N.

Judge

Delivered this 19th day of March 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge