



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 114 OF 2013
(Originally Nairobi Cause No. 2110 of 2012)

JACKSON OKETCH MIYA

CLAIMANT

v

NAKURU GOLF CLUB

RESPONDENT

JUDGMENT

1. Jackson Oketch Miya (Claimant) sued Nakuru Golf Club (Respondent) in Nairobi Cause No. 2110 of 2012 on 18 October 2012. He stated the issue in dispute as unfair and unlawful dismissal.
2. On 25 April 2014, Onyango J directed, on the application of the Claimant that the Cause be transferred to Nakuru for hearing and determination. The Judge further directed the Registrar to notify the parties of the transfer.
3. Consequently the Deputy Registrar, Nairobi notified the Claimant's Advocate on record and the Respondent of the transfer through her letter dated 25 April 2013.
4. The Deputy Registrar, Nakuru through his letter dated 10 May 2013 notified the parties to appear before the Court on 16 May 2013.
5. The Cause was mentioned before Ongaya J on 16 May 2013. None of the parties was in attendance and he directed the Deputy Registrar to notify the parties to appear before him on 3 June 2013. Later that day, the Claimant appeared and sought leave to amend the Memorandum of Claim. Leave was granted and mention was fixed for 18 June 2013.
6. On 18 June 2013, Mr. Odhiambo appeared for the Claimant, while Ms. Chege appeared for the Respondent. Mr. Odhiambo sought further time to file his documents while Ms. Chege informed the Court that the Respondent would call 1 witness. The Court directed that the Cause be heard on 24 September 2013.
7. On 24 September 2013, Ms. Omondi appeared for the Claimant while Mr. Githui appeared for the Respondent. The parties informed the Court they were negotiating an out of court settlement.
8. The Court adjourned the Cause to 14 October 2013, and further directed the Respondent to file any

preliminary objection it had before the mention date.

9. On 13 November 2013, Ms. Omondi and Mr. Githui informed the Court there was no agreement and hearing was fixed for 20 February 2014 but on this day, Mr. Githui disclosed that the parties were negotiating but when the matter was mentioned on 13 March 2014, there was no agreement.

10. Eventually, on 9 October 2014, the Court directed that the hearing proceeds on 18 February 2015, and that a hearing notice be served upon the Respondent.

11. On 18 February 2015, when the Cause was called for hearing, the Respondent was not present nor represented. On record was an affidavit of service sworn by Clement Momanyi deposing that the firm of Githui & Co. Advocates had been served with a hearing notice. Annexed to the affidavit of service was a Hearing Notice duly stamped by Githui & Co. Advocates acknowledging receipt of the hearing notice on 16 October 2014.

12. The Cause therefore proceeded *ex parte*. The record also does not have a copy of any Response which may have been filed on behalf of the Respondent.

13. The Claimant gave sworn testimony. His case is that he was employed by the Respondent as a guard in 1995 and that the Respondent issued him with a Certificate of Service dated 20 November 2003 (exh. 4). The Claimant stated that the date was an error as he was issued with the Certificate after dismissal in 2012.

14. He also stated that the Respondent used to issue him with pay slips. He produced pay slips for September, October, and December 2010, March, April, June, July and December 2011 (exh. 1).

15. On the dismissal, he stated that he was dismissed on 24 January 2012 through a letter of even date (exh. 2) allegedly on account of a lost cow.

16. According to the Claimant, the cow was found and a report made to Railways Police Station and that the cow later disappeared.

17. On working hours, the Claimant testified that he used to work from 7.00 pm to 8.00am and on Sundays from 6.00pm to 10.00am. He was not granted offs.

18. The Claimant also stated that he was underpaid.

19. The Claimant further stated that he reported to the Ministry of Labour.

20. The Claimant's evidence remains uncontroverted. Among the documents filed by the Claimant though no reference was made to it included a show cause letter dated 30 December 2011.

21. The show cause letter informed the Claimant of the allegation against him and that he was to meet the Respondent's Committee within 7 days. The Court was not told whether the hearing took place.

22. Because of the Respondent's failure to appear during the hearing, the Court only has the Claimant's evidence. In complaints of unfair termination of employment/wrongful dismissal, the statute has placed an obligation upon an employer to prove it complied with procedural fairness (section 41 of the Employment Act, 2007), the reasons for dismissal (section 43 of the Act) and that the reasons were valid and fair (section 45 of the Act).

23. The Court can only conclude that the summary dismissal of the Claimant was unfair.

Appropriate remedies

Statutory entitlements/terminal dues

Appearances

For Claimant Mr. Wambeyi instructed by Wambeyi Makomere & Co. Advocates

For Respondent Githui & Co. Advocates (did not attend hearing)

Nixon Court Assistant