



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 1415 OF 2012

ELIAS KIPLAGAT KANDIE.....CLAIMANT

VERSUS

680 HOTEL LTD.....RESPONDENT

JUDGMENT

1. The claimant in this suit was summarily dismissed on 17th March, 2012 following allegations of him being responsible for the loss of USD 100 from a guests' room at the time the claimant was alleged to have been in the said room as a room steward.
2. It was his testimony before the Court that he was employed in 2003 and worked until 2013. His exit salary was Kshs.10,164/=.
3. The claimant informed the Court that a guest complained that some USD 100 was missing from the safe in the room the Claimant was assigned to clean. He was picked up by the police who interrogated him but he was later released when the guest intervened and said he was not sure it was the claimant who was responsible for the loss. He was all the same dismissed on 17th March, 2012. It was his evidence that he appealed against the dismissal without success. He stated that he was never subjected to any disciplinary hearing prior to dismissal.
4. In cross-examination he stated that on the material day he cleaned the room. When he entered the room there was no one. He came to know of the loss of the money the next day. He denied even seeing the security reports.
5. The respondent's witness Ms. Beldin Osindi Malit informed the Court that she was the Human Resource Assistant and that she joined the respondent after the claimant had left but was familiar with the records. It was her evidence that the respondent's security investigated the incident and compiled a report. According to her, records are kept on who enters and exits the hotel rooms. The record of access to the safe is also recorded. She stated that according to the records the safe was opened at 8.47 a.m. and the claimant exited the room at 8.51 a.m. It was her evidence that the guest withdrew the complaint since he wanted the claimant to continue working. The claimant was however dismissed because room stewards were supposed to be of very high standard and integrity.
6. The Employment Act places the burden of proof of reasons for dismissal on the employer. Further the Act requires that before summary dismissal is done, an employee must be explained to

in a language he best understands the reason why his dismissal is being considered.

7. The claimant in this suit was dismissed based on allegations of being responsible for the loss of USD 100 from a guest's room. He was picked up and interrogated by the police but was released when the guest intervened and stated he was not sure if it was indeed the claimant who took the money. The respondent all the same proceeded to dismiss the claimant based on an investigation report which was never shown or contents revealed to him.

8. When the guest withdrew the complaint stating he was not sure it was the claimant who was responsible for the loss of the money, the substratum of the reason for which the claimant could have been dismissed was lost. What therefore ought to have been considered was whether dismissal was the only option in the circumstances. The question then would be: would a reasonable employer dismiss in the circumstances.

9. Whereas the Court is careful not to impose its sense of reasonableness on the respondent, the Court however is of the view that it was unreasonable to dismiss the claimant after the guest had withdrawn the claim and expressed doubt over the claimant's responsibility for the loss.

10. The Court therefor considers the claimant's termination unfair and so finds. The Court thus awards the claimant as follows:-

- (a) On months' salary in lieu of notice.....10,164.00
- (b) Unpaid salary for 17 days worked
in March, 2012.....6,171.00
- (c) 8 months' salary as compensation for unfair
dismissal.....81,312.00
- 97,647.00
- (d) Costs of the suit
- (f) Certificate of service

11. It is so ordered.

Dated at Nairobi this 22nd day of May 2015

Abuodha J. N.

Judge

Delivered this 22nd day of May 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge