



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA
AT NYERI
CAUSE NO. 68 OF 2013
GEOFFREY GIKONYO MATHU.....CLAIMANT

-VERSUS-

INTEX CONSTRUCTION COMPANY LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 8th May, 2015)

JUDGMENT

The claimant filed the memorandum of claim on 26.06.2013 through Karweru & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. A declaration that the claimant's dismissal was unlawful, discriminatory and malicious.
- b. One year salary at Kshs. 30,000.00 being general damages.
- c. Kshs. 98,357.00 being contractual dues owed.
- d. Costs plus interest on (c) and (d).

The respondent filed the response to the memorandum of claim on 22.08.2013 through Ameyo Guto, Etole & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs to the respondent.

The claimant was employed by the respondent as a motor vehicle driver earning gross salary of Kshs. 30,357.00 per month. The claimant testified that on 3.10.2012 he was assigned to drive a lorry registration No. KAZ 931B. The claimant testified that on that morning he had complained to his supervisor that the lorry had defective brakes and the tyres were seriously worn out but he was asked to proceed with the assignment. The claimant had noted the defective brakes because of the leaking air observable on the lorry's hydraulic braking system. He complied with the instructions and he drove the lorry to a construction site at Tetu and during the loading process the lorry's brakes failed and the lorry crushed into the respondent's tractor registration No. KAZ 198L also engaged in the same loading assignment. After the accident the police inspected the lorry and reported that the lorry was defective and was not roadworthy.

The claimant testified that a manager called Amital instructed the claimant's supervisor known as Munene to sack the claimant. The supervisor asked the claimant to write a letter explaining the occurrence of the accident and thereafter, the claimant was served with a dismissal letter dated 4.10.2012.

The letter stated that the dismissal was on the account of the claimant's careless driving of the lorry on the material date crushing into the tractor and thereby making the respondent to incur big financial loss due to repair of the tractor.

The claimant was arrested and charged with the offence of driving un-roadworthy vehicle in traffic case no. 543 of 2012; he was convicted and fined Kshs. 10,000.00.

The claimant's case was that he had been instructed by his supervisor to drive the un-roadworthy lorry.

Despite service, the respondent and the respondent's advocate did not attend and participate at the hearing. The respondent did not file the final submissions.

The court has considered the pleadings, the evidence and the final submissions filed for the claimant. The court makes the following findings:

1. The claimant has not made an explanation for obeying his supervisor's unlawful instructions to drive the un-roadworthy lorry. The court finds that the claimant made a conscious decision to drive the lorry that ended up in the accident and as confirmed by the claimant's subsequent conviction in the traffic offence.
2. The court has considered the evidence. The claimant testified that he was given an opportunity by his supervisor to explain the accident. The claimant testified in court to confirm that indeed he drove the un-roadworthy lorry and that lorry had been involved in an accident due to the identified defects. The court has further considered that the claimant was found guilty and convicted in the traffic court. Accordingly the court finds that the respondent had valid reasons to dismiss the claimant. The court finds that the dismissal was not unfair and the respondent had a valid reason to dismiss the claimant as provided for in section 43 of the Employment Act, 2007.

In conclusion the court finds that the claimant has failed to establish his case to justify the remedies as prayed for. The court has considered the respondent's failure to attend at the hearing and to file final submissions.

In the circumstances, the claimant's suit is dismissed with orders that each party shall bear own costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 8th May, 2015**.

BYRAM ONGAYA

JUDGE