



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 56 OF 2014

(Originally Kericho High Court Civil Case No. 117 of 2011)

JULIUS BETT.....CLAIMANT

v

SBI INTERNATIONAL HOLDINGS AG (KENYA)...RESPONDENT

JUDGMENT

1. Julius Bett (Claimant) was employed by SBI International Holdings AG (Kenya), (Respondent) as a Concrete Foreman on 5 October 2010.
2. On 8 June 2011, the Respondent suspended him from duty for 2 weeks on allegation of stealing cement and a balloon cylinder. The suspension was to allow for investigations. The suspension was to last until 23 June 2011.
3. However, on 14 June 2011, the Respondent terminated the services of the Claimant and the reason given was theft of cement and a balloon cylinder.
4. The Claimant being dissatisfied commenced legal action before the High Court, Kericho against the Respondent on 16 December 2011 alleging unlawful/wrongful dismissal.
5. The Respondent filed a Defence on 7 February 2012.
6. On 13 February 2014, Sergon J ordered that this matter be transferred to this Court for hearing and disposal. The Cause was heard on 3 November 2014, 1 December 2014 and 27 April 2015.
7. The Court has considered the pleadings, evidence and submissions and identified the issues for determination as, *whether the termination of Claimant's employment was unfair* and if so, *appropriate remedies*.

Whether termination of employment was unfair

Procedural fairness

8. Section 41 of the Employment Act, 2007 has made procedural fairness before separation a mandatory part of the employment relationship in Kenya.
9. The main components of the procedural fairness are that the employer should inform the employee of the charges/allegations and afford the employee an opportunity to make representations. The employee is

also entitled to be accompanied by a colleague or union representative during the hearing.

10. The Claimant stated in his testimony that he was given a suspension letter on 8 June 2011 and on 14 June 2011, a termination of employment letter and that no investigations were carried out because he was not called to any such investigations.

11. The onus to ensure that a termination of employment has been preceded by procedural fairness has been imposed on the employer. It was therefore incumbent upon the Respondent to demonstrate that it complied.

12. The process can either be through correspondence or take an oral form. It could also be a combination of correspondence and face to face hearing.

13. Where the process takes the form of correspondence, show cause letters with details of the allegations and responses by the employee would meet the requirements of procedural fairness. Where face to face process is involved a prudent employer would be well advised to keep minutes or notes indicating who were present, when the hearing took place and where.

14. The Respondent did not call any witnesses. It did not disclose in its Response who informed the Claimant of the allegations against him, who were present during a hearing if any, when and where the hearing was held.

15. The nearest indication that the Claimant was informed of the allegations to confront is the suspension letter. The suspension letter was clear that the suspension was to enable investigations to be carried out.

16. Investigations are meant to establish facts upon which to commence disciplinary process against an employee. The suspension letter herein therefore does not meet the threshold standard of section 41 of the Employment Act, 2007.

17. Indeed, the Claimant's testimony that no investigations were carried out was not challenged or controverted. The termination of employment actually occurred before the end of the suspension period.

18. In the view of the Court, the Respondent has failed to prove that it followed a fair process before terminating the services of the Claimant and the Court finds the termination procedurally unfair.

19. Because of the finding, it is not necessary to consider whether the Respondent has proved the reasons for the termination (section 43 of the Employment Act, 2007) or that the reasons for the termination were valid and fair (section 45 of the Act).

Appropriate remedies

Damages

20. One of the primary remedies where the Court finds unfair termination/wrongful dismissal is an award of compensation equivalent to not more than 12 months gross wages.

21. The remedy however is discretionary, and the factors the Court ought to consider have been set out in section 49(4) of the Employment Act, 2007.

22. In his submissions, the Claimant sought Kshs 2,298,420/- being 12 months wages as compensation multiplied by 5. The legal basis for this was not laid before Court.

23. The Claimant served the Respondent for about a year. He was also paid Kshs 50,960/-. He is currently working with the County Government of Kericho.

24. Considering these factors, the Court would award the Claimant the equivalent of 3 months gross

wages as compensation.

25. The Claimant's gross wages according to April 2011 pay slip was Kshs 34,090/- and the Court therefore assesses the compensation as Kshs 102,270/-.

Damages for defamation

26. The Claimant alleged defamation in his pleadings and evidence. But he did not prove that he was defamed. This relief is rejected.

Conclusion and Orders

27. The Court finds and holds that the termination of the Claimants employment was procedurally unfair and awards him and orders the Respondent to pay him

a. 3 months wages compensation Kshs 102,270/-.

28. The Claimant to have costs of Kshs 50,000/-.

Delivered, dated and signed in Nakuru on this 26th day of June 2015.

Radido Stephen

Judge

Appearances

For Claimant
Advocates

Mr. Koske instructed by Tengekyon & Koske Co.

For Respondent

Mr. Modi instructed by Modi & Co. Advocates

Court Assistant

Nixon