



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 752 OF 2014

(Originally Kitale High Court Civil Case No. 137 of 2006)

BENJAMIN SABUNI MUCHANJA..... CLAIMANT

v

C.M.C. MOTORS GROUP LIMITED.....RESPONDENT

JUDGMENT

1. Benjamin Sabuni Muchanja (Claimant) sued C.M.C. Motors Group Limited (Respondent) before the High Court in Kitale on 13 July 2006 alleging wrongful and unlawful termination of employment. He sought a declaration that the dismissal was wrongful, reinstatement and compensation.
2. The Respondent filed a Defence on 15 August 2006.
3. On 14 May 2007, the Claimant filed an Amended Plaintiff in which an additional plea of unfair dismissal was added. As a consequence, the Respondent filed an Amended Defence on 28 May 2007.
4. The parties filed their list of issues on 17 February 2012 and 29 February 2012 respectively.
5. On 8 December 2014, the suit was transferred to this Court and eventually the Cause was heard on 10 March 2015 and 9 April 2015. The Claimant filed submissions on 17 April 2015 while the Respondent filed its submissions on 7 May 2015.
6. From the pleadings, evidence and submissions, the Court has isolated the issues for determination as, *whether the dismissal of the Claimant was lawful/justified* and appropriate remedies/contractual statutory entitlements due to the Claimant.

Whether dismissal was lawful/justified

The process

7. The Claimant contended that he was not given any notice before termination of employment and without complying with the Respondent's laid down procedures. He also faulted the Respondent for not giving him a chance to be heard.
8. The Claimant was issued with an offer of appointment dated 19 November 1986.
9. The terms agreed in the letter of offer did not include a hearing before termination of the contract. The only provision on separation provided that

Upon the satisfactory completion of the Probationary Period one month's notice of termination of employment will be required in writing, on either side. The company, however, reserves the right of instant dismissal for breaches of honesty, security, or for any act of gross misconduct.

10. The Claimant therefore cannot fault the dismissal for failure to grant him a hearing because the contract did not have such a requirement. The *laid down procedures* were not produced in Court.
11. Similarly, the applicable statute, the Employment Act, cap. 226 (repealed) did not provide for a hearing or compliance with the rules of natural justice before terminating an employment contract.
12. The Claimant did not produce any other rules or procedures of the Respondent which incorporated the right to a hearing before dismissal.
13. All that the contract required was one month written notice. Although the Respondent did not give the one month written notice, the letter of termination informed the Claimant that he would be paid one month salary in lieu of the notice.
14. There is a legion of authorities as to the applicability of the rules of natural justice in the employment relationship at the material time. In Nakuru Civil Appeal No. 27 of 1992, *Rift Valley Textiles Ltd v Edward Onyango Oganda*, the Court of Appeal held that the

rules of natural justice have no application to a simple contract of employment, unless the parties themselves have specifically provided in their contract that such rules shall apply.
15. That was the law then, however harsh its effects on employees dismissed without cause but on the strength of mutually agreed contractual provisions.

Whether dismissal was lawful/justified

16. Under the then statutory framework, an employer could dismiss an employee for no reason, a good reason or a bad reason provided damages equivalent to the notice period was paid (see the *Oganda* decision at page 3 citing with approval the decision in *Cyrus Nyaga Kabute v Kirinyaga County Council*, Civil Appeal No. 29 of 1985). An employee could be dismissed without cause, unless the contract provided otherwise.
17. This is unlike the current framework where an employer must have valid and fair reasons to dismiss an employee (see section 45 of the Employment Act, 2007).
18. The reasons given for the termination of the Claimant's employment were failure in duties by not vetting stores documents and control registers leading to loss of Kshs 1,700,000/-.
19. It is not necessary for the Court to delve into whether the reasons for the termination of employment were justified because the Respondent offered the Claimant damages equivalent to the notice period agreed in the contract.
20. The Court will therefore only discuss any contractual or statutory entitlements due to the Claimant at separation under the remedies he sought on the pleadings.

Appropriate remedies/contractual entitlements

Declaration termination was wrongful and unfair

21. Unfairness of termination of employment was an alien concept to the employment relationship in Kenya at the time the parties herein separated. Such a declaration would therefore not be applicable.
22. A declaration that the termination was unlawful would not be appropriate in the circumstances of this case.

Reinstatement

23. Reinstatement within the employment relationship outside the confines of the Trade Disputes Act (repealed) was not available. In fact, the common law abhorred reinstatement in employment contracts.

Compensation/damages

24. The measure of damages available to the Claimant was the equivalent of one month pay in lieu of notice as per the contract.

25.The Claimant pleaded what he referred to as loss of monthly salary of Kshs 38,000/- since February 2006 to date. No evidential, contractual or statutory foundation for this head of claim was placed before the Court.

26.The Respondent offered the Claimant dues he was entitled to on separation and he should collect the same, if he did not collect them.

Conclusion and Orders

27.From the foregoing discussion, it is the view and finding of the Court that the Cause herein be dismissed with no order as to costs, and it is so ordered.

Delivered, dated and signed in Nakuru on this 5th day of June 2015.

Radido Stephen

Judge

Appearances

For Claimant Mr. Barongo instructed by Barongo Ombasa & Co. Advocates

For Respondent Mr. Ombati instructed by Douglas Ombati & Co. Advocates

Court Assistant Nixon