REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 543 OF 2013

JARED OCHEING NDEGE……..CLAIMANT

VERSUS

APPLETON RESORT……..……RESPONDENT

JUDGMENT

1. The claimant was employed by the respondent as an accountant on 9th May, 2012 and served as such until his services were terminated on 14th January, 2013. He contested the termination through this suit and further claimed that upon termination the respondent refused to pay his terminal dues.

2. The respondent in its memorandum of response averred that in the course of the claimant's employment, he lacked the requisite diligence and efficiency in carrying out his duties as the hotel accountant and on numerous occasions the claimant failed, neglected or ignored to carry out instructions of diligent accounting of funds with numerous warnings regarding banking of petty cash, daily reconciliation and maintenance of accounts.

3. The respondent further averred that on 17th December, 2012 the claimant was issued with a show cause letter to provide a response why disciplinary action should not be taken against him for disobeying directives from management, lack of proper accounting of funds and violation of accounting policies and procedures. The claimant responded but the respondent found the response unsatisfactory and summarily dismissed the claimant. The respondent therefore refuted the claimant's claim that he was terminated without any reason or notice.

4. In his oral evidence in Court he stated that his services were terminated on allegations of being rude. He admitted receiving an email of a show cause letter to which he responded. He stated that he was accused of occasioning one of the respondent's cheques to bounce after failing to do banking on time. He denied failing to bank money on time.

5. In cross-examination he denied misappropriating money and putting money where it was not supposed to be. He stated that his duties included drawing financial strategies for the Company, banking and collection of payments. When shown the cash-summary book he admitted he was familiar with it and that he signed the same. He further stated that his signature meant he collected the money and should have banked it or pay out through petty cash voucher.

6. Concerning the bankings he stated that he signed for Kshs.5,510 and banked 5,410 and

further that he signed for Kshs.12,150 and banked 12,050. Further he signed for Kshs.31,120 but banked 30,120 and Kshs.19,850 and banked 17,550/=. His explanation was that the difference was caused by transport charges. According to him, he was never given any fare.

7. The respondent's witness Mr. Onchwari stated that the claimant was in charge of general accounting work and that all revenue collected were to be banked intact without any deductions. It was his evidence that petty cash was separate from the daily collections. He stated that he used to give the claimant petty cash and that the allocation varied depending on needs. He further stated that he checked the claimant's bankings and noticed the discrepancies. According to him the Bank was within a walking distance from the hotel and further that there was a vehicle available if needed.

8. It was his evidence that the respondent only owes the claimant 14 days worked but he must however account for the money unsurrendered.

9. Employment Act places the onus of proof of reasons for termination of employment on the employer. Where the employer fails to do so, the termination shall be deemed to be unfair.

10. The claimant in this suit does not deny that he more than one occasion banked less money than what was collected and he signed for. When asked about it by the respondent he stated that the discrepancy was caused by money he spent on transport to the bank and on one occasion he had to fuel the company's vehicle as the respondent's director had asked to meet him and his colleagues urgently. The explanations were rejected by the respondent who stated that transport if needed, was catered for by petty cash which was drawable using petty cash voucher. The respondent further stated that the bank was within walking distance and if the claimant needed a vehicle, one was always available.

11. Whereas the Court claims no specialization in accounting, basic book-keeping requires that all revenue collected are banked first before any expenditure can be drawn from it. However where exigencies of the moment require that it be expended without banking proper accounting entries must be made to balance the books.

12. Whereas the claimant stated that he could use cash in hand and raise petty cash voucher he did not say he did so in this case. All he said was that he intended to do so later but was prevented from entering his office after his services were terminated.

13. Employment relationship in most cases is built on trust especially in the area where the claimant worked that entailed collection and accounting for revenue. Use of the respondent's revenue contrary to accounting procedures was a justifiable reason for terminating claimant's services. This Court has stated severally before that termination of employment contract isa matter of management discretion and where there exists reason or reasons which an employer genuinely believes warrants dismissal either summarily or with notice or payment in lieu, the Court cannot interrogate the veracity of those reasons and substitute them with its own sense of what constitutes valid or justifiable reason for dismissal. To do so would be tantamount to usurping the managerial discretion of an employer. The Court's role is to assess and evaluate the reasons for termination in the context of what a reasonable employer would do in the circumstance. If a reasonable employer would dismiss, the dismissal will be upheld.

14. In this particular case the claimant admitted expending money collected hence banking less. He appreciated that it was proper accounting procedure to draw cash from petty cash to meet expenses like transport. Being an accountant, doing something contrary to his professional training is either negligence or professional misconduct for which the respondent was justified to dismiss.

15. The Court therefore reaches the conclusion that the dismissal of the claimant was justified in terms of reasons and procedure followed in carrying it out.

16. The Court however orders the respondent to pay the claimant the admitted 14 days salary for the month of May, 2012 subject to any reconciliation or handing over of accounts that were handled by the claimant. The rest of the claim however stand dismissed.

17. There will be no order on costs.

18. It is so ordered.

Dated at Nairobi this 30th day of October 2015

Abuodha J. N.

Judge

Delivered this 30th day of October 2015

In the presence of:-

……for the Claimant and

……for the Respondent.

Abuodha J. N.

Judge