



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 73 OF 2013

UNION OF NATIONAL RESEARCH AND

ALLIED INSTITUTES (UNIRISK).....CLAIMANT

VERSUS

KENYA MEDICAL RESEARCH INSTITUTE (KEMRI).....RESPONDENT

JUDGMENT

1.This claim has been brought on behalf of one David Too Kisang' who was an employee of the respondent.

2.The grievant was employed by the respondent in January, 1993 as a clerical officer. He rose through the ranks to the level of a transport officer. On 1st July, 2009 he was issued with disciplinary letter asking him to respond to various allegations against him within 7 days. He responded and on 22nd July, 2009 he was served with interdiction letter and put on half salary. He unsuccessfully challenged his interdiction in cause number 70 of 2010. By the time of determining his case on interdiction he had already been dismissed from the respondent's services leading Counsel for the respondent to plead res judicata with regard to the present claim. However the plea is not sustainable as the issue before the Court then was the grievant's suspension not interdiction.

3.The Court has carefully considered the pleadings in this matter, supporting documents and submissions by Counsel. At page 27 the claimant memorandum of claim and bundle of documents the respondent called upon the grievants to answer specific charges. These were:-

- a. **Submitting a report to the Office of M&E regarding the in-house meeting and proposed solution to the issues discussed in that meeting and that of June 22nd 2009.**
- b. **Refusing to use various existing vehicle requests forms with ulterior motives.**
- c. **Refusing to hand over vehicle work tickets to the Office of Monitoring & Evaluation as agreed in the meeting.**
- d. **He misused Motor vehicle KAR 619L while it was defective by changing drivers with different work tickets.**

- e. **He lied about the purpose the vehicle was being used for.**
- f. **He rudely declined to release the previous work ticket of the vehicle for verification.**
- g. **He rudely refused to go to the office of M&E when summoned thus insubordination of his seniors.**
- h. **He had been inciting the drivers to sign a memo to the office of DD (A&F) with false allegations against the M&E Officer.**

4. In his response dated 3rd July, 2009 and found at page 29 instead of responding to the charges, the grievants resorted to personal attack of one Dr. Kizito who he accused of several things including fighting him. The respondent felt dissatisfied with the response and interdicted him. At page 61 of the claimant's bundle of documents are minutes of disciplinary committee meeting held on 9th, 11th and 15th September, 2009 to investigate the grievant's conduct and make recommendation to the respondent's director on the best course of action on the grievants issue. This meetings were attended by the grievant and one Ms. Saida Osman who was a shop steward of the claimant. On 15th September, 2009 the grievant was called and questioned on:-

- a. **Why fuel receipts were not countersigned by the drivers.**
- b. **Why original work tickets for vehicle No. KAL 047U were not the same with the copy.**

5. The grievant's response was that he had worked for the respondent for 16 years and that he knew the procedures for fuelling vehicles. He further agreed that it was a requirement that the fuel receipts be countersigned by the drivers and that failure to ensure this was done was an oversight on his part and took the blame. He further agreed to be surcharged Kshs.6,000/=.

6. After deliberations the committee noted that the grievant had been found to have committed the following offences:-

- i. **Theft by employee.**
- ii. **Falsification of receipts.**
- iii. **Alteration of documents.**
- iv. **Unprocedural documentation of fuel receipts.**

7. In conclusion the committee recommended that the grievant be terminated for gross misconduct.

8. The Court notes that prior to the charges that led to termination of grievant's services, he had a history of disciplinary issues through-out his service with the respondent for which he either warned or surcharged or both. Therefore in all fairness to the grievant, he struck me as a problem employee.

9. The Court considering his track record during his service with the respondent and the procedure followed in handling his case, cannot fault the respondent for terminating his services the way they did and for reasons they did.

10. The Court therefore finds no merit this claim and proceeds to dismiss the same with costs.

11. It is so ordered.

Dated at Nairobi this 23rd day of October 2015.

Abuodha J. N.

Judge

Delivered this 23rd day of October 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge