



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 71 OF 2012
(Before Hon. Lady Justice Hellen S. Wasilwa on 14th October, 2015)
MAURICE NGODE MITO.....CLAIMANT
VERSUS
SUMMIT TEXTILES (E.A) LIMITED.....RESPONDENT

JUDGMENT OF THE COURT

1. The Claimant herein filed his Memorandum of Claim on 23/1/2012 claiming payment of his terminal dues plus damages. In his claim, the Claimant averred that he was employed by the Respondent on 6/3/94 as a Machine Operator until the 15th March 2010, when the Respondent unlawfully and without just cause terminated his services. At the time of termination, the salary was 11,831/=.
2. It is the Claimant's case that on 8/3/2010, while on duty, the machine he was working on ran out of fuel and the machine stopped. The Respondent's employee one Bhakhri came to ask him why the machine stopped and he explained that it ran out of fuel. It was a Friday and the said Bhakhri told the Claimant to leave.
3. On 12/3/2010 he came to work as usual, and the guards told him, they had been told not to allow him in. He was then issued with a letter of termination Appendix 2 and told to get his terminal dues in the accounts section. He was paid 36,000/=. He then filed this case seeking payment of his services for 15 years, overtime of 72 hours, notice fee and other terminal dues amounting to 9,254/= not paid.
4. In cross examination the Claimant avers that he was a permanent employee and had received a warning letter on 26/6/2006 and another on 3/6/2009.
5. The Respondents filed their response to the claim on 9/3/2013 through the firm of Gatheru & Company Advocates. They admit that the Claimant was in their employment from 1st December 1994 to 15th March 2010 and not from March 1994. They deny that the Claimant was terminated unlawfully and without just cause.
6. They aver that the Claimant's terminal dues were as per their paragraph 4 of the defence being 71,278/= from which they deducted 65,509/= being paye and Co-op loan. That the balance of 4,054/= was deposited in Claimant's account at Equity Bank. They deny owing Claimant 131,729/80 or any other amount and asks court to dismiss this claim accordingly. It is their position that the Claimant used waste oil in the machine and that is why it stopped and so he was summarily dismissed but the same was

changed to a normal termination.

7. I have considered evidence from both parties. The issues for determination are whether there were valid reasons to terminate the Claimant and whether due process was followed.

8. On the issue of reasons, the Respondent avers that the Claimant used waste oil in the machine and that is why the machine stopped. The Claimant avers that the machine stopped because it ran out of oil. Using waste oil may be a valid reason to warrant being disciplined but it was not a valid reason for summary dismissal as envisaged under Section 44 of the Employment Act 2007. When the Respondent decided to terminate the Claimant, the Claimant should have been subjected to due process as envisaged under Section 41 of Employment Act 2007 which states as follows:

“(1). Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

(2). Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44 (3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.”

9. This process was not adhered to. It is therefore this Court’s finding that the Claimant was unfairly terminated in terms of Section 45 of Employment Act 2007 which states as follows:

“(1) No employer shall terminate the employment of an employee unfairly.

2. A termination of employment by an employer is unfair if the employer fails to prove:

a. that the reason for the termination is valid;

b. that the reason for the termination is a fair reason:-

i. related to the employee’s conduct, capacity or compatibility; or

ii. based on the operational requirements of the employer; and

c. that the employment was terminated in accordance with fair procedure.

10. I therefore find for the Claimant and award him as follows:

1. 1 months salary in lieu of notice = 11,831/=

2. 12 months salary compensation for unlawful

termination of employment = 11,831 x 12 = 141,927/=

TOTAL = 153,803/=

Less statutory deductions.

The Respondent will also pay costs of this case.

Read in open Court this 14th day of October, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Kahenga holding brief for Ochieng Omolo for Claimant

No appearance for Respondent