



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 826 OF 2013

(Before Hon. Lady Justice Hellen S. Wasilwa on 8th October, 2015)

CHRISTOPHER NJOROGE KIARIE.....CLAIMANT

VERSUS

SIMPLY PERFECT LIMITED.....RESPONDENT

JUDGMENT OF THE COURT

1. The Claimant herein filed his Memorandum of Claim on 31/5/2013 in person. He claims wrongful and unfair termination of his services and failure by the Respondents to pay him his terminal benefits.

Claimant's case

2. The Claimant's case is that he was employed by the Respondent on 27/9/2012 as a driver earning a salary of 18,000/=. He avers that he served the Respondent with loyalty and due diligence until October 2012 when he was involved in an accident and the Respondent unlawfully terminated his services without notice and refused to pay him his terminal benefits.

3. He avers that after the accident in October 2012 he was never paid his November salary. He had been injured in this accident and had to proceed with treatment. When he came back to work in January 2013, the Respondent refused to pay his outstanding salary from November 2012 to February 4th 2014 demanding he pays for things that got lost in the vehicle when it was under breakdown. They also refused to pay his terminal dues and dismissed him. He demands payment of his dues as particularized in his memorandum of claim.

4. After his oral evidence in court, he was cross examined by Counsel for the Respondent and he stated that he reported this accident to Mariakani Police Station and even recorded a statement. He says he didn't get his salary as the Respondent had deducted certain sums alleging he had spent diesel on breakdown.

Respondent's Case

5. The Respondents filed their Statement of Defence on 20/7/2013 through the Federation of Kenya Employers. In their defence, the Respondent admitted having employed the Claimant. That on 12th October 2012 the Claimant was assigned truck registration number KAG 376 S and was to ply the Mombasa – Nairobi route. He was in the company of one Mr. Benson Chege who was a senior driver.

All details of fuel consumption and other logistics were explained to him.

6. The Claimant made several trips between Nairobi and Mombasa until 10th November 2012 when the vehicle he was driving was involved in an accident at Machinery area along Mombasa road. The Claimant informed the Respondent about the accident but on further inquiry on the cause of the accident the Claimant became rude and refused to give any explanation.

7. That the motor vehicle was towed from Mombasa to Mlolongo where the Claimant and his co-driver Nahashon Ochieng decided to spend the night. The following morning, the Claimant alleged that the motor vehicle had been vandalized and parts worth 11,200/= and fuel equivalent of 21,200/= stolen while at the parking.

8. Again, the Respondent avers that on 20th December 2012, the Claimant was involved in an accident again while at Mariakani weighbridge. The accident was reported to Mariakani police station and recovery of the truck was done afterwards. On 23rd December 2012, the Claimant was instructed to drive the truck to Mariakani police station for inspection but declined to follow the instructions. He abandoned the truck at Miritini and the co-driver Mr. Nahashon Ochieng drove to Mariakani for inspection and later to Thika where it is still waiting to be repaired.

9. It is the Respondents case that after this they tried to contact the Claimant through phone calls so he could report to work in January but he didn't show up until 2/1/2013 when he reported on duty and was referred to hospital for checkup. The doctor recommended rest for him upto 16/1/2013. On 16/1/2013 he reported to work and was asked to give an explanation as to the course of the accident of 20th December 2012. He declined to record a statement or respond to the management concerns about the cause of the accident. He then abandoned work and later opted to address the Respondent through Kituo Cha Sheria. The Respondent deny dismissing the Claimant as alleged.

Issues for determination

10. Upon hearing the evidence from both sides and submissions filed herein, the issues for determination are as follows:

a. Whether the Claimant was terminated by the Respondent.

b. Whether Claimant is entitled to remedies sought.

11. From evidence of Claimant, the Respondent dismissed him in January 2013 after refusing to pay him his dues and pending salaries for November and December 2012. That they had allegedly decided to surcharge him for fuel and motor vehicle parts lost when the vehicle he was driving was vandalized after the accident. Whether the Claimant was terminated or not would not be material for now given the provision of Section 45(3) of the Employment Act 2007 which states as follows:

“An employee who has been continuously employed by his employer for a period not less than 13 months immediately before the date of termination shall have the right to complain that he has been unfairly terminated”

12. In the case of the Claimant, he had been in the Respondents employment from 27/9/2010 to December 2012 for a period of about 3 months and was basically on probation. Under Section 45(3) of employment 2007, he cannot complain of unfair termination. However, there is no proof he was paid his November and December 2012 salary as alleged by the Respondent and I award him his salary for the 2 months amounting to 36,000/=. The Respondents will also pay costs of this suit.

Read in open Court this 8th day of October, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Claimant present in person

No appearance for Respondent