



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1332 OF 2012

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

JOSEPH OLOO JUMA.....CLAIMANT

VERSUS

VEGPRO KENYA LTD..... RESPONDENT

JUDGMENT OF THE COURT

1. The Claimant Joseph Oloo filed his Memorandum of Claim through the firm of Ouma Mulanya and Company Advocates. The Claimant avers that he was employed by the Respondent with effect from 6th November, 2007, as a dispatch supervisor, at a salary of Kshs 18,266/= per month.
2. The Claimant started working for the Respondent in 2004 as a casual laborer until 6th November, 2007, when his status was confirmed. The confirmation letter dated 6th November, 2007, is attached as **App C**. He worked as a night shift floor manager and later on he was appointed team leader. The Appointment letter is marked **App D**. It is the Claimant's case that he served the Respondent well and did his work diligently until the 29th February, 2012, when the Respondents wrongfully terminated his employment in breach of the terms of service. He was advised to go home and await communication before resuming duty.
3. The Respondent has not called the Claimant back to work to date. He avers that the Respondent's actions amount to actual practical termination of his employment since he was not called back to resume duty nor was he given reasons for his termination. He contends that on 27th February, 2012, the Respondent wanted to employ loading supervisors and he was advised that they were going to employ three (3) people. When time for confirmation reached they decided to confirm only two people who had joined the Respondent and decided to leave out the older person.
4. The Operations Manager on the other hand only wanted one (1) person. The Claimant contends that he insisted that he could not employ any of the other two people because they did not have experience and as a result all the pressure would fall on him.
5. On 29th February, 2012, the Human Resource officer summoned him and told him that the Operations manager had reported that he had been rude to him and as a consequence he should go home and they would discuss his matter and call him. The Claimant stated that he was not issued with any letter.
6. In cross-examination by counsel for the respondents, the claimant informed court that when he was employed in 2007 as a dispatch supervisor he was working with a team. His immediate

- supervisor was one Linzi Malungu. The Floor Manager was not in charge of hiring, Human Resource did the hiring. The Claimant could advise on employment in his department which advise was not binding on Human Resource. He recommended that all the three people be employed and be put on contract but his advise was rejected.
7. Although he was not happy with the turn of events he was never rude to the Operations manager. The Supervisor shouted at him and said if he could not confirm the people he would go away and he was ordered out of the meeting.
 8. The Claimant stated that he told the Supervisor that he could not confirm the people for employment as he was not HR. He never raised his voice at the floor manager. He was never called by anyone in the Company to explain what had happened. HR advised him to go home and would call him after establishing what had happened. He was never given a letter to show cause.
 9. In re-examination the Claimant reiterated that though they disagreed with the supervisor he never at any one time raised his voice.
 10. The respondents filed their memorandum of Defence to the claim on 25.09.2012 through the firm of Muturi S.K. and Company Advocates. It is the Respondents contention that the services of claimant were lawfully terminated after complying with procedural fairness after the claimant deserted his work place and used abusive language to his immediate senior contrary to the Respondent's policy, terms and conditions of employment.
 11. RW1 a Quality Assurer at the Respondent Company, stated that he knew the Claimant and on 28th February, 2012, he was at work and the Claimant was his supervisor. There was a disagreement between the Claimant and Linzi the Supervisor on the employment of two (2) people from outside but they had already trained two people from the inside and they thought it would have been better to hire those who had been trained from within.
 12. A meeting was convened by Mr. Linzi who wanted our views on the two new people. The meeting according to RW1 was not peaceful because at one point they quarreled with the manager. The Manager sent them out of the meeting because they were not agreeing with him. The following day they were called by HR and he was given a Show Cause letter and he responded to his letter within 24 hours. He did not know whether the Claimant picked his letter and returned it. RW1 was never called to any disciplinary proceedings. He still works for the Respondent ever since.
 13. In cross examination RW1 confirmed that there was a quarrel between them and the Manager. RW1 signed a letter acknowledging that he had received a notice to show cause and that letter was not produced in Court. He was moved to another department in April 2012 due to bad blood between him and the manager.
 14. RW2 was the Human Resource Manager for the Respondent's Naivasha Region. On 28th February, 2012, he received an email from the Operations Manager complaining about two of his supervisors who behaved during a meeting giving rise to an altercation.
 15. On 29th February, 2012, the two supervisors were summoned by RW1 to explain what had happened. They were both given notice to show cause but the Claimant refused to explain himself in writing and walked away and never saw him again.
 16. RW2 wrote a termination letter to the Claimant on 21/3/2012 and offered to pay him his salary, overtime earned, leave days and certificate of service but the Claimant never came back to him. RW2 contends that the Claimant was never wrongfully terminated.
 17. In cross examination, RW2 stated that he caused investigations to be done. The meeting was heated and he could hear the loud voices because it was just outside his window. He did not have

a copy of the letter given to the Claimant. The letter was never dispatched.

18. Having considered evidence of both parties, issues for determination are as follows:

1. ***Whether the Claimant was dismissed or terminated.***
2. ***If he was terminated whether there were valid reasons to terminate him.***
3. ***If due process was followed.***
4. ***Whether the Claimant is entitled to remedies sought.***

19. On 1st issue, the Claimant stated that he was terminated verbally apparently for arguing with his supervisor. The Respondent argued that he absconded duty after he refused to answer a show cause letter.

20. The Claimant's Appendix J is a letter from Claimant's Advocate dated 19/3/2012 seeking clarification on employment status of the Claimant. This was about a month after the incident complained of and the Respondent never replied to the said letter. The Respondent avers that they gave a letter of show cause to the Claimant on 29/2/2012 but there is no indication that the same was received by them.

21. If it was true that the Claimant absconded, the Respondent had an opportune time to reply to Claimant's Advocate's letter and state as such. This was not done and the claim that the Claimant absconded duty is therefore an afterthought. I find that the Claimant was terminated from duty.

22. On 2nd issue, there seems to have been an exchange between Claimant and some Respondents employees. This however was not a valid reason to summarily dismiss an employee.

23. On issue of due process, it is apparently this was not followed as envisaged under Section 41 of Employment Act 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.”

24. It is therefore this court's finding that the Claimant's termination was unfair and unjustified as under Section 45 of Employment Act and I declare it so.

“(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.***

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

1. *1 months salary in lieu of notice = 17,266/=*
2. *Service pay for 4 years = ½ month salary x 4 = 8,633*

x 4 = 34,532/=

3. *12 months compensation for unfair termination =*

17,266 x 12 = 207,192/=

TOTAL = 258,999/=

Less statutory deductions.

Plus costs and interest

The Claimant should also be issued with a Certificate of Service.

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

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Ombara for Claimant

Nduta holding brief for Mr. Muturi for Respondent