



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 2433 OF 2012

KENYA CHEMICAL WORKERS UNION CLAIMANT

VERSUS

GENERAL PLASTICS LIMITED RESPONDENT

Mr. Opiyo for Claimant

M/S Kamau for Respondent

JUDGMENT

1. The suit was filed by Kenya Chemical & Allied Workers Union, on behalf of its member Moses Antony Ilukol, a former employee of the Respondent herein after the 'Grievant.'
2. The Grievant was employed as a machine attendant on 11th July 1997 and worked continuously until the 5th July 2011 when he was dismissed from employment.
3. According to the Claimant, he was telephoned by a shop steward while he was on annual leave and informed that a dismissal letter had been sent to him.
4. The Grievant had been given a show cause letter dated 23rd June 2011 to answer to charges that on Tuesday 21st June 2011 while on night shift, as the attendant on duty on BM-42 machine running GL-10 bottles, he had negligently generated unacceptable quantity of rejects and he had been asked to report to the Head of Department to explain at 10 a.m. on 22nd June 2011.
5. That the Grievant did not honour the appointment with the Head of Department and instead showed up at 8 a.m. accompanied by others.
6. The Grievant was asked to show cause why he should not be dismissed from employment within 48 hours from the date of the letter.
7. The Grievant told the Court that by the time he received the show cause letter 48 hours had lapsed.
8. The Grievant went to seek clarification from the Human Resource office which office referred the Claimant to the Factory Manager to get clarification. The Factory Manager told the Grievant to go back to work and that the matter would be sorted out later.
9. The Claimant was not called again until the 30th June 2011, when he was granted annual leave. The leave application form duly approved from 30th June 2011 to 30th July 2011 was produced as exhibit 4.
10. On 15th July 2011, while on leave, he was informed that a letter of dismissal had been written and that he should go to discuss the matter with the Union.
11. At the meeting between the Union and Management, the Claimant was given a chance to answer the show cause letter. The Grievant replied to the letter and went back home as he was still on annual leave. The Grievant was later called to a meeting at Federation of Kenya Employers where he was informed that a dismissal letter had been sent by post. The Grievant states that he did not receive the letter.

12. Appendix '7' is the response to the show cause letter dated 20th July 2011 and the letter of dismissal dated 5th July 2011, marked "By Registered Post" is appendix '2' to the claim.
13. The letter of dismissal reiterates the allegation in the show cause letter and that the Grievant refused to answer to it and instead stormed the office of one of the Technical Managers accompanied by shop steward, Mr. Ngure and Hesbon Odhiambo.
14. That this was an act of gross insubordination and was unacceptable behavior from an elected worker's representative who should lead by example.
15. That the Respondent would not be held to ransom by a few elected union officials.
16. The Grievant was therefore summarily dismissed. He was asked to liaise with Accounts Section for his final dues.
17. The dispute was reported to the Ministry of Labour on 22nd August 2011 and the Ministry proceeded to appoint a conciliator on 4th October 2011.
18. The Union presented its Memorandum to the conciliator dated 11th January 2012 demanding reinstatement of the Grievant without loss of benefits and in the alternative, reduce the summary dismissal to normal termination and he be paid his service benefits as per the Collective Bargaining Agreement (CBA) and maximum compensation for unlawful dismissal.
19. A certificate of unresolved dispute was issued on 23rd July 2012 upon failure to reach settlement. The Claimant seeks;
 - a. that the summary dismissal be declared wrongful, unlawful and unfair;
 - b. that the Court directs the Respondent to reinstate the Grievant without loss of benefits;
 - c. that the Grievant be paid salary arrears for the period he has been out of employment;
 - d. in the alternative, the Court reduces the summary dismissal to normal termination and direct payment of terminal benefits in terms of the CBA;
 - e. costs of the suit.

Respondent's Memo

20. The Respondent opposes the claim vide a Memorandum of response dated 3rd July 2013.
21. The Respondent admits that the Claimant was its employee from 1st July 1997 vide a contract of employment dated 17th July 1997.
22. The Respondent avers that on 21st June 2011 the Grievant while working on a night shift negligently generated unacceptable quantity of rejection of which he was asked to report to the Head of Department to explain. That on 22nd June 2011, the Grievant was supposed to attend a meeting with the Head of Department at 11.00 a.m. to explain the incident of 21st June 2011 but instead the Grievant stormed the Head of Department's office at 8 a.m. accompanied by other employees contrary to the instruction of the management to meet the Head of Department at 10 a.m.
23. That on 23rd June 2011, the Respondent issued the Grievant with a show cause letter for failure to follow instructions and for negligently wasting the company resources. He was supposed to respond to the letter within 48 hours but the Grievant refused to accept the show cause letter. The shop steward intervened and persuaded the Grievant to collect the show cause letter but he did not respond to the allegations.
24. The respondent on 30th June 2011 wrote to the Union vide the National General Secretary regarding the unacceptable conduct by the Grievant.
25. The Union did not respond to the letter of 30th June 2011 and the Respondent had no alternative but to summarily dismiss the Grievant.
26. The Respondent called RWI, Hussein Shariff Gulan in support of the Respondent's case. RWI reiterated the averments made in the Memorandum of Response adding that the summary dismissal was lawful and procedurally fair and the case be dismissed with costs.
27. RWI noted that the Grievant was a shop steward and he had his fellow stewards caused fracas at the work place. RWI was the Head of Department and told the Court that the Grievant did not attend a meeting scheduled for 10 a.m. to explain excess rejects the night before. The Grievant therefore forfeited his chance to explain the complaint made against him regarding high quantity

rejects.

28. The show cause letter was done on 23rd and the Grievant accepted the same on 27th but failed to respond to it.

29. The Respondent filed written submissions upon close of its case.

30. Issues for determination

- i. Whether the summary dismissal was for a valid reason.
- ii. Whether the termination was in terms of a fair procedure.
- iii. What remedy if at all is available to the Claimant.

Issue i

31. From the pleadings and oral testimony, the Court has come to the following conclusions of fact;

32. That the Grievant was an elected shop steward at the shop floor of the Respondent;

33. That Claimant was a machine attendant producing GL-10 bottles. On the 21st June 2011, he is alleged to have generated unacceptable level of rejection and was asked by his supervisor to report the following day at 10 a.m. at the office of RWI to explain the cause of the excess reject.

34. That instead of heeding the instruction, he and two other colleagues went to the office of RWI at 8 a.m. in the morning and caused a commotion therein.

35. The Respondent wrote a show cause letter to the Grievant on 23rd June 2011 to explain his conduct but the Claimant resisted to receive the letter until the 27th June 2011, when he was prevailed upon by colleagues to take the letter and respond.

36. The Grievant failed to respond to the show cause letter and on 30th June 2011, the Respondent wrote to the Union complaining of the behavior of the Grievant and other shop stewards. The Union did not respond to the complaint.

37. On 5th July 2011, the Respondent wrote to the Grievant a letter of summary dismissal and the same was sent to the Grievant who was at the time on leave by registered post.

38. It is clear that the conduct by the Grievant amounted to gross insubordination itself, a lawful cause to summarily dismiss an employee. The Grievant's failure to explain the alleged negligence while he worked on the night of 21st June 2011, left the Respondent with no alternative but to find the Grievant liable for the excessive rejection of GL-10 bottles and was therefore negligent and subject to disciplinary action in absence of a reasonable excuse.

39. The Grievant had served the Respondent from 1997, 1st July up to 5th July 2011 a period of about four years. No evidence of previous misconduct was placed before Court. The Court finds that he was a first offender.

40. The Claimant was a union leader and therefore had added value to good labour relations at the work place prior to this unfortunate instance.

41. The Court finds that though the Respondent had reasonable cause to summarily dismiss the Grievant, this is a proper case, for commuting the summary dismissal to normal termination in view of the aforesaid reasons.

Issue ii

42. The Court finds that the Grievant denied himself due process by his refusal to answer to attend the meeting scheduled for 22nd June 2011 at 10 a.m. and by refusing to reply to the show cause letter on 23rd June 2011.

43. The Court therefore finds that the termination of employment was in terms of a fair procedure.

Issue iii

44. In view of the finding in issues (i) and (ii) above and considering the alternative prayer (d) for the Court to consider giving the Grievant benefits and entitlement as contained in the CBA, the Court grants the Grievant terminal benefits as follows;

- i. Per Clause 11 of the CBA one month salary in lieu of notice;

ii. gratuity calculated at nineteen (19) days salary for every completed year of service, in this case, 4 year in terms of Clause 29 of the CBA.

45. The Grievant is not entitled to compensation for the termination in view of the finding that the same was for a valid reason and in terms of a fair procedure.

46. Both parties are partly successful and each party is to meet its own costs of the suit.

47. The terminal benefits are payable with interest at Court rates from date of this Judgment till payment in full.

48. The tabulation in terms of the order of the Court be filed by the Respondent within thirty (30) days of this Judgment.

Dated and Delivered at Nairobi this 20th day of November, 2015.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE