



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT KISUMU**

**CAUSE NO. 78/2013**

***(Before Hon. Lady Justice Hellen Wasilwa on 30.1.14)***

PETER ODHIAMBO OBUYA.....CLAIMANT

VERSUS

KIBOS SUGAR & ALLIED INDUSTRIES.....RESPONDENT

**JUDGMENT**

The claimant herein Peter Odhiambo Obuya filed his statement of claim in person on 8/8/2011. He later instructed the firm of R.O. Okungu and Company Advocates to represent him. The claimant's case is that on 22.7.2007, he was employed by the respondent as a clerk in Agricultural Department and he was on grade CO2. He was being paid Kshs 6,352/= per month contrary to what was stated in the CBA as Kshs 14,920/=. His payslips for February 2010 and May 2010 were exhibited as exhibits 1 and 2. He told court that he was never given a letter of employment when he was employed but the payslip was proof that he worked under the respondent. He also produced in court MFI 1 a copy of the document showing he was a member of a union. However, his evidence is that after he joined the Union, the management wanted him to revoke his membership to the said union but he refused. He continued serving the company well and he says he believes he is still serving as he has not received any termination letter to-date.

On 6.6.2010 at around 10 a.m, he was walking to the main office. He heard a shout from the respondents chairman one Raju. He asked him why he was demanding money from farmers. The claimant replied that he didn't know anything of that nature. The chairman asked the Human Resource Manager to talk to him. Instead the Human Resource Manager gave him a letter of suspension and advised him not to come into the factory for 21 days. After the 21 days, the claimant went to the factory to find out if he could come back, but he found that the security staff had been instructed not to allow him in.

He was not given any termination letter. He came to the District Labour office and was shown a letter written by respondents indicating that they had terminated his services (MFI 4). The letter of suspension is APP 5 and the claimant states, he never received any other letter after this one. He made a reply to this suspension letter through his APP 6. He stated that he was the chairman of the workers who joined the union and he believes that that is the reason as to why he was terminated. He seeks damages for wrongful termination and payment of his terminal dues as court deems fit. In cross-examination by counsel for respondent, the claimant stated that his duties were to prepare cheques to farmers and other ordinary businesses and that he was not coming in direct contact with farmers. He also stated that he went before the labour officer but was only interested in knowing why he was terminated.

The respondents on the other hand filed their reply to the Memorandum of Claim on 25.10.2011

through the firm of Otieno, Yogo, Ojuro and Company Advocates. They also called one witness the Human Resource Manager. The gist of respondents defence is that the claimant worked for the respondents but there was a complaint against him of receiving bribes from farmers in order to offer them services.

As a result, the claimant was suspended from work for 21 days to pave way for investigations.

There were some investigations done but the Claimant refused to sign the meeting. After 3 weeks, the Respondents received a demand notice from Claimant's counsel demanding payment of over 450,000/= to claimant being he was suspended and then dismissed. The respondent sought the labour office to resolve the issue in August 2010. The meeting failed to take place as the claimant stated that he was still under suspension and had not been served with a dismissal letter. The Human Resource Manager told court that the claimant was earning 7,000/= basic pay with no other allowances. They stated that they didn't sack the claimant but he was suspended but he didn't give them time to finish their investigations. They also averred that Claimant was not underpaid and he is only entitled to payment of salary for days worked. The respondent's contention is that claimant deserted duly after his suspension.

After hearing the evidence of the parties and after considering their submissions accordingly, the issues for determination are as follows: \_

- 1. Whether the claimant was terminated by the respondents?**
- 2. If yes, whether there were any valid reasons for the termination.**
- 3. Whether the claimant is entitled to the remedies he seeks from court.**

On the 1st issue, the claimant told court that he was issued with a letter of suspension which suspension was to run for 21 days. At the end of the 21 days period, he returned to work but was locked out of the premises on instructions of the respondent. No written communication was given to him. When he went before the labour officer he was surprised to learn that the respondents had written a letter indicating that they had terminated his services and needed the labour officer to assist them calculate the claimants dues. The contention by respondent that they had not terminated the claimant is therefore false as they did constructively terminate him and without any termination letter.

On the second issue, in the absence of any letter of termination, the claimant was not informed of any reasons as to why he was terminated contrary to Section 43 of the Employment Act. He was not also accorded any hearing as envisaged under Section 41 of the Employment Act. His right to be heard was flouted by respondent and therefore his dismissal was unfair and unjustified in the circumstances.

On the 3rd issue, given that claimant was unfairly terminated, I find for him and enter Judgment for him as follows; \_

- 1. 1 Month salary in lieu of notice - 14,920/=**
- 2. Underpayment of salary - 29,840/=**
- 3. House allowance not paid - 51,474/=**
- 4. Leave allowance for 1 year - 14,920/=**
- 5. 12 months salary as compensation for damages for unlawful termination -  $14,920 \times 12 = 179,040/=$**

**TOTAL 290,194/=**

He shall also be paid cost of this suit and be issued with a Certificate of Service.

**HELLEN WASILWA**

**JUDGE**

**30.1.2014**

**Appearance**

Olel for respondent

Okungu for claimants

C/c- Wamache