



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 329 OF 2013

BETWEEN

SHADRACK MULINGE MUIA CLAIMANT

VERSUS

POLYFLEX INDUSTRIES LIMITED..... RESPONDENT

Rika J

CC. Ms. Jane Sikulu

Mr. Makokha instructed by Namada & Company Advocates for the Claimant

Mr. Wasuna instructed by Wasuna & Company Advocates for the Respondent

ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

AWARD

1. The Claimant filed his Statement of Claim on 13th March 2013. The Respondent filed its Statement of Reply and a Witness Statement on 23rd April 2013. The Claimant and the Respondent's Witness Sylvanus Ouko both testified on 11th July 2013 when hearing closed. Parties were directed to file and exchange their Final Submissions within 14 days. The Court advised Award would be delivered on Notice.
2. The Claimant stated he was employed by the Respondent as a General Worker in early August 2008. He worked diligently and continuously, until 8th March 2012 when he was injured in the course of work. He was admitted in hospital for 5 days. When he reported back on duty mid-March, he was summarily dismissed by the Respondent's Personnel Manager. He was advised that his services were no longer required. He last earned a rate of Kshs. 365 per day. He felt termination was wrong, as he had sufficiently mended, and was ready to continue serving. He seeks the assistance of the Court in the following way:-
 - a. A declaration that termination was unlawful;
 - b. Payment of one month salary in lieu of notice at Kshs. 10,950;
 - c. Payment of annual leave days for the 4 years worked at Kshs. 32,850;
 - d. 12 months' salary in compensation for unfair termination calculated at Kshs. 131, 400; and
 - e. The Respondent meets the costs of the Claim.

3. In his testimony, the Claimant told the Court he was not availed a letter of employment. He was subscribed to the National Social Security Fund [N.S.S.F]. He worked from 8.00 a.m. to 4.00 p.m., 6 days or sometimes 7 days a week. He was paid Kshs. 375 daily. He was injured while at work on 8th March 2012. He was treated at Coptic Hospital in Nairobi. The Respondent initially met the costs of the hospitalization. Subsequently the Personnel Manager advised him the Respondent would not continue to meet the costs because the Claimant did not provide the Respondent with the supportive medical records. He was at the same time told that unless he availed the x-ray documents to the Respondent, he would cease to work. He was not told why these documents were needed by the Respondent. He was not paid any work injury benefits. He did not desert work, and returned his work uniform through an emissary.

4. On cross-examination, the Claimant stated the Company he worked for is Polyflex Industries, not Polyplex Industries. He undertook general work. He was injured by a machine roller, after the Supervisor had asked him to assist with the machine work. The Company took him to hospital and paid his medical fees. He was not advised of any balance of the hospitalization costs. He went to see Mr. Ouko to request for cash for medical treatment. He was told unless he produced the medical documents, there would be no more cash paid to him. There would be no more work for him. The medical documents in question were lost by an Uncle of the Claimant who had been entrusted custody. He testified he has never taken annual leave. He asks the Court to allow the Claim.

5. In the Statement of Reply, the Respondent states it does not know of a man called Shadrack Mulinge Muta or a Company called Polyplex Industries. The Respondent states its correct name is Polyflex Industries Limited, and it employed a man called Shadrack Mulinge Muia. On 8th March 2012, the Claimant touched a fast moving shaft on the laminating machine, thereby injuring his hand. He acted contrary to instructions in touching the machine. He had not been assigned any work at the machine. He was taken by the Respondent to Coptic Hospital on 13th March 2012, treated and discharged. He was due for review on 20th March 2012 when he went to the Office, collected his medical records, but did not return to work after this. He deserted. He was not dismissed by the Respondent.

6. Sylvanus Ouko testified that he is the Human Resource Manager, and conversant with the issues in dispute. He described the Claimant as young and dedicated employee, who joined Polyflex sometime in 2008. He touched a machine roller on 8th March 2012, breaking his arm in the process. He had not been instructed to work on the machine. The Respondent is involved in printing and manufacturing of flexible packaging material. He was hospitalized for 5 days. The bill was about Kshs. 142,000, while the Claimant had an employment medical insurance cover limited to Kshs. 100,000. The Respondent cleared the bill. After the Claimant was discharged, he went to Ouko seeking more assistance for outpatient care. He was given the documents which were in the custody of the Respondent, and provided with a driver who drove him to Coptic Hospital. This was on 20th March 2012. The Respondent expected the Claimant to come back with the documents and account for everything, but he never returned. His contract was not terminated. The Respondent processed the Claimant's work injury claim but at the time of the hearing, the claim had not been settled. The Witness stated that the Respondent was waiting for the finalization of the present Claim. The Witness stated that the Company is ready to have the Claimant back at work. The other employees know this, and his injury did not affect his capacity to work.

7. In cross- examination the Witness testified the Claimant had worked on casual terms for 4 years. He was not availed a written contract. Ouko conceded this amounted to unfair labour practice. The Claimant disappeared with all the documents on 20th March 2012. Ouko saw the Claimant next sometime in the year 2013 when the Claimant went to the workplace seeking to be paid his dues. Compensation for work injury is ready. There is no reason why the same should not be paid. The Respondent urges the Court to reject the Claim.

The Court Finds and Awards:-

8. The Respondent through Mr. Ouko's evidence is categorical it did not terminate the Claimant's contract of employment. It is ready to have the Claimant back to work. According to the Respondent the Claimant picked his medical records from the workplace on 20th March 2012; attended a scheduled medical review;

but never reported to work again. There was no termination and the Respondent is ready to have the Claimant back, a fact which is widely known by the Claimant's former colleagues at the workplace.

9. The Court is not able to disagree with this evidence given by the Respondent. There is no letter of termination, and no clear instructions given to the Claimant by the Respondent, to suggest that the Respondent had terminated the Claimant's contract of employment. The Claimant seems to mix-up his claim for work injury benefits with his claim for alleged termination. The Respondent is on record in either case, with the assurance that it is ready to redress the grievances that have brought the Claimant to Court. In the circumstances, there would be no need for the Court to impose a decision on the Parties, or assume that the relationship is ended and terminal benefits and compensation payable, while there is no evidence of termination, and the Respondent is ready to have the Claimant back to work. This is not a matter that called for judicial intervention. The Claimant states in paragraph 6 of his Statement of Claim that he has sufficiently healed, and is ready to go on working. The Claimant has not given evidence or in any other way expressed his inability or readiness to resume work.

He can pursue his work injury benefits while on duty. In sum the Court Orders:-

[a] The Claimant shall report back to work for assignment of duty within 30 days of the delivery of this Award;

[b] The years out of service shall be treated as unpaid leave; and

[d] No order on the costs.

Dated and delivered at Nairobi this 22nd day of January 2014

James Rika

Judge