



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

PETITION NO. 1567 of 2012

GABRIEL KARIUKI CHOMBA..... CLAIMANT

VERSUS

TOP IMAGE LIMITED.....RESPONDENT

JUDGMENT

By a Memorandum of Claim dated 5th September, 2012 and filed in Court on the same day the claimant alleges that he was dismissed unlawfully by the Respondent and seeks the following orders:-

1. Kshs. 330,000/-
2. Interest at Court Rates.
3. Costs of the Suit.

The Respondent filed its Reply to the Claim on 26th September 2012 through its Human Resources Manager Sammy K. Chesongol in which it denies that the dismissal of the claimant was unjustified. It prays for dismissal of the case with Costs.

At the hearing the claimant testified that he was employed by the Respondent and posted to work as a retail Centre Representative in Safaricom Shop at Embu on a one year fixed term contract commencing 1st October 2011 and expiry on 30th September 2012. His salary was Shs. 30,000/- per month. He was hard working and diligent. He satisfied customers and was awarded for excellent customer experience. He was dismissed summarily on 24th November, 2011 without proper reason. He was not given a hearing. He was denied the enjoyment of the remaining 10 months of the contract. He was not given notice. He had not been involved in any disciplinary issues. The dismissal caused him suffering. He urged the court to order the Respondent to pay him salary for the remainder of the contract term of 10 months, costs and interest.

Under cross-examination he denied overcharging a customer who purchased a laptop or selling anti-virus and another software to a customer which caused the laptop to crash. He further denied refusing to resolve the problem for the customer and sending the customer to a technician outside Safaricom thereby causing the customer to lose the warranty.

The Respondent called two witnesses. PW.1 Evanjeline Muniya Nyago testified that she currently works as a teacher but in October 2011 she was working for Safaricom at Embu. On 25th October 2011 the claimant sold her a laptop HPG6 series pavilion at Shs. 49,020/-. The typed receipt read Shs. 47,999/- when she asked about the discrepancy on the receipt and the price paid the Claimant responded that he had come up with his own deal. The Claimant's actual words were " nimefanya ukarabati wangu" . She was unhappy and demanded a refund of the difference. The Claimant replied that the

laptop did not have Microsoft office and antivirus. The Claimant then came with a disk and downloaded a program onto the laptop. When she tried using the laptop later it crashed. When RW1 called the claimant to inform him about it he responded that he was busy. RW1 asked a neighbour who is a computer expert to check the laptop and was informed that the laptop had crashed and she needed to re-install the programmes. When she brought this to the claimant's attention and asked for her money back he told her "venye utajisikia". She had the operating system in her laptop restored and reported the matter to the Retail Manager who asked her to explain what happened in an email. There was a meeting in the office between her, the Claimant and the shop Manager Charles.

When the Claimant was asked to respond to the accusation he retorted "What do you want me to say?" RW1 was later refunded her money.

RW2 Charles Karanja Rumba testified that he was the shop Manager of Safaricom Embu shop in October 2011. RW1 purchased a laptop from the shop and later complained to him that she had not been treated well by the Claimant. She gave him a long story about what had happened. RW2 asked her to put her complaint in writing. Her complaint was that she was overcharged and a software which is not sold in the shop was installed by the Claimant causing the laptop to break down. RW2 held a meeting with the Claimant and RW1 and investigated the matter.

Since Safaricom was not the employer of the Claimant he wrote a report whose subject was poor performance and integrity concerns. He recommended that the Claimant should be investigated and action taken.

I have considered the pleadings, the evidence on record and the written submissions by the parties.

There is no dispute that the Claimant was employed by the Respondent and deployed at Safaricom retail shop in Embu on 1st October 2011 on a one year fixed term contract. He was dismissed from employment on 24th November 2011 on grounds that on 25th October 2011 he acted inappropriately towards a customer in Embu Safaricom Retail Shop by being dishonest on laptop pricing and selling personal products inside Safaricom shop. There is no evidence that the Claimant was given a hearing by his employer the Respondent. The evidence relied upon by the Respondent is the inquiry carried out by the Retail Shop Manager of Safaricom who recommended that the Claimant be investigated. The only action taken by the Respondent was to ask the claimant to give a detailed explanation about the incident. Based on the explanation by the Claimant which was a denial of the allegations against him, he was summarily dismissed. The Respondent did not comply with Clause 18 of the Claimant's contract on warning system and summary Dismissal, and Section 45 (2) of the Employment Act.

For these reasons the summary dismissal of the Claimant amounted to an unfair dismissal.

The Claimant seeks payment of salary for the unexpired term of his (1) one year contract in the sum of Shs. 330,000/-, costs of Shs.45,975/- and interest.

There is no law that provides for payment of unexpired term of contract. The Claimant has also not stated how he arrived at one figure of Shs. 45,975/- as costs.

Since the summary dismissal was unfair, I award the Claimant Shs. 30,000/- being one month's salary in lieu of notice in terms of Section 49 (1) (a) of the Employment Act. The Claimant is also entitled to reimbursement of court fees and refund of proven fees for service of summons, hearing and mention notices as per notices filed in the court file to be confirmed by the Registrar.

His claim for payment for salary for unexpired term of contract is dismissed.

Orders accordingly.

READ IN OPEN COURT THIS 5TH DAY OF MARCH, 2014.

HON. LADY JUSTICE M. ONYANGO

JUDGE

In the presence of

Gabriel Kariuki in person Claimant

No appearance for Respondent