



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NYERI
INDUSTRIAL CAUSE NO. 127 OF 2013 (CONSOLIDATED)
CATHERINE MURIUKI & OTHERS.....CLAIMANTS
VERSUS
GUCOKANIRIRIA KIHATO TRADERS
AND FARMERS CO. LTD.RESPONDENT

JUDGMENT

1. This cause has been consolidated with cause numbers 128, 129, 132 and 133 of 2013.
2. The claimants in all of them aver that being employees of the respondent in various positions they were unlawfully and unfairly terminated from their employment. They aver that the termination was unlawful in the sense that they were dismissed contrary to the provisions of the Employment Act and that their dismissal was unfair in the sense that the reasons proffered by the respondent for their dismissal were not fair reasons to warrant a dismissal.
3. A review of the pleadings in this suit together with testimony of witnesses reveal wrangling within the respondent as an organization pitting one section of the workers against the other with the consequence that those who were deemed to associate with the CEO were dismissed.
4. At the trial, the claimants gave evidence that they received suspension letters but denied ever receiving their dismissal letters.
5. The respondent for its part maintained that the claimant's refused to collect their dismissal letters and terminal dues either from the respondent's premises or County Labour Office. The respondent further maintained that the dismissals were lawful and fair, citing among others insubordination by the claimants and misuse of the respondents property. Be that as it may, there is on record a letter dated 3rd December, dismissing the claimants from employment. The letter avers that the decision was reached after considering each claimants' oral representation. DW1 who testified on behalf the respondent however stated that they received letters from the claimants complaining about their suspension. And that the Labour Officer advised them to pay the claimants their dues and terminate their services. They consequently notified the claimants to come and collect their letters and dues. He stated that they were in communication with the claimants.
6. Part VI of the Employment Act makes elaborate provisions for termination and dismissal from employment. These provisions provide as minimum and ought to be read together with employment contract where there is one. The standard contract of service signed by the claimants provided for a termination notice of one month or one month's pay in lieu thereof. No provision has been made in the contracts for summary dismissal.

7. From the circumstances of the claimants, it cannot be said that they were terminated. The circumstances of their removal from employment amounted to a dismissal for gross- misconduct as provided under section 44 of the Employment Act.
8. Section 41(1) of the Employment Act provides that:

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.

9. Subsection (2) provides that:

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 representation 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.

10. From the pleadings and evidence it is not clear to the court that the procedure as laid down under the foregoing provisions were followed. No evidence was led of disciplinary hearing or minutes of the Board where the decision was reached, leading to the conclusion that the claimants dismissal was unlawful and unfair. Section 45 prohibits unfair termination of employment. Under section 49(1) an employee who has been unfairly terminated, the court has power to award up to 12 months wages as compensation for unfair termination of services.

11. In conclusion the court hereby awards the claimants as follows:

(a) One month's salary in lieu of notice.

(b) Salary for the period of suspension up to 3/12/2013 when they were unfairly dismissed.

(c) Eight months salary as compensation for unfair dismissal.

(d) Costs of the suit.

(e) The respondent to unconditionally issue the claimants with certificates of service.

12. Parties to liaise with the Deputy Registrar of this court to calculate individual awards to each claimant in line with the parametres set out above.

13. It is so ordered.

Dated at Nyeri this 6th day of June, 2014.

ABUODHA N. J

JUDGE

Delivered in open Court in the presence of Mr. Nyangoro Advocate for the Claimants and in the presence of Mr. Cheruiyot holding brief for Mr. Mwangi Advocate for the Respondent.

ABUODHA N. J

JUDGE