



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NYERI
INDUSTRIAL CAUSE NO. 130 OF 2013

RUTH ALINDA & ANOTHER.....CLAIMANTS

VERSUS

GUCOKANIRIRIA KIHATO TRADERS AND FARMERS CO. LTD.....RESPONDENT

JUDGMENT

1. The claimants in this suit were employees of the respondent serving as Secretary and Driver respectively. However due to some wrangling in the company their services were terminated for reasons that the court can deduce from pleadings and evidence, to be association with the CEO's camp. The CEO was eventually sacked and it is stated as one of the reasons for their termination to be, failure to detach themselves from the sacked CEO.
2. There is no dispute that the claimants were employees of the respondent in the respective position and on terms alleged.
3. It is also not in dispute that their services were terminated as a consequence of the wrangling in the company. The respondent's position is that they were absent from duty on 24th October, 2013 without permission. The claimants however contend that they were away on official duty with the CEO.
4. The question which the court requires to determine in this dispute is whether the reason for terminating the claimants employment was a fair reason within the meaning of section 45 of the Employment Act and if so whether a fair procedure was followed in terminating their services as required by Section 45(2) (c).
5. The claimants are accused of having absconded duty on 24th October, 2014 while their position is that they were away on official duty with the CEO with Ms Alinda serving as PA to the CEO while Mr. Njeru was the driver.
6. It is not disputed that the circumstances of the respondent were such that there was wrangling in top management pitting the Chairman in one camp against the CEO in another. Under such circumstances, it is not unusual to get staff being caught in the mire albeit innocently. More often than not they become victimized simply because they were discharging their usual duties in service of the unfavoured party. If the respondent's dismissal letter is anything to go by, they were accused of failing to detach themselves from the sacked CEO. According to the claimants' however, they were with the CEO in the course of their official duties.

7. The dismissal letters dated 3rd December, 2013 appear to be a response to the claimants' earlier letters dated 9th November, 2013 in which the claimants' sought to know their status with the respondent.
8. Whereas the dismissal letters refer to oral representation by the claimants, no evidence was tendered at the trial showing that a disciplinary hearing ever took place and in accordance with section 41 of the Employment Act. Besides it was alleged that the claimants absconded duty for one day on 24th October, 2013 yet no notice to show cause why they should not be dismissed from work was ever given.
9. Section 41 lays down procedure for dismissing employees for misconduct. One of the essential requirement is that such an employee must be accorded an opportunity to make representations and that such an employee be at liberty to have some third party make representation as well on his or her behalf. This appears not to have happened in this case.
10. To that extent the court finds that the claimants were wrongfully and unfairly terminated from employment.
11. Section 45 of the Employment Act prohibits unfair termination of employment and further under section 49(1) an employee who has been unfairly terminated is entitled to compensation of up to twelve months wages.
12. The court therefore awards the claimants as follows:-

(a) Salary for the month of October 2013.

(b) One month's pay in lieu of notice.

(c) Eight months salary as compensation for unfair termination of employment.

(d) Respondent to issue the claimants with certificate of service.

(e) Costs of the suit.

It 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 for Mr. Mwangi Advocate for the Respondent.

ABUODHA N. J

JUDGE