



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 301 OF 2013

JOSEPH KIMUNYA.....CLAIMANT

- VERSUS -

SALT MANUFACTURERS (K) LTD.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 11th July, 2014)

JUDGMENT

The claimant filed the memorandum of claim on 10.09.2013 through Robert Ndubi & Company Advocates and prayed for judgment against the respondent for:

1. A declaration that the termination was unfair and unlawful.
2. Notice pay of Kshs.10,000.00.
3. Compensation for unfair termination being 12 months' salaries at Kshs.10,000.00 per month making Kshs.120,000.00.
4. Service pay at 1/12 for 6 years of service making Kshs.60,000.00.

The statement of response was filed on 30.01.2014 through Boniface Masinde & Company Advocates. The respondent prayed for dismissal of the claimant's suit with costs. The reply to response was filed on 26.02.2014.

The case proceeded for hearing on 16.06.2014. The claimant gave evidence to support his case. The respondent's witnesses included Bharath Siyani being the respondent's Workshop Manager (RW1) and Ravindran Ramathan, the respondent's Accountant (RW2).

The claimant was orally employed by the respondent as a driver with effect from October, 2005. He was terminated on 20.02.2012. On that date, the claimant reported on duty at 7.00 am and worked until 2.00 pm when he was instructed to go and collect fresh coffee berries from the farm. At about 2.30 pm, he off-loaded the berries and proceeded to the respondent's filling station located on the respondent's farm. In that processes of fueling, the claimant was summoned to go and see the respondent's clerk called Miriam who informed the claimant that he had been terminated from employment. The claimant was informed by the said Miriam that the termination had been made by the respondent's General Manager called Rahul. The claimant's computed dues as shown to him by Miriam were Kshs.10,000.00 and the claimant declined to take the pay as it was, in the claimant's view, unreasonable. The General Manager later conveyed to the claimant that the reason for termination was that all vehicles were to be taken to the central workshop in Nairobi so that there would be no work to be performed by the claimant. The

General Manager further informed the claimant that the Kshs.10,000.00 was his last pay and the claimant testified that he was dissatisfied. The claimant testified that the General Manager then told him to go and complain to the President of the Republic.

The claimant testified that he was assaulted by the General Manager and the police officers who were called in to arrest the claimant. The claimant testified that he was forced, once at the police station and in presence of Rahul, to sign for Kshs.19,377.00 as his terminal dues. The claimant denied that he was ever given the termination letter filed in court for the respondent and he had not been told about theft of fuel as the reason for the termination. The claimant denied ever siphoning the claimant's fuel from the motor vehicle assigned to him as a driver and he was not charged with the offence of alleged stealing of the fuel.

RW1 testified that the claimant was fired on account of high fuel consumption on suspicion that he provided transport services outside the formal assignments. RW1 testified that the claimant was never fired on account of siphoning fuel. Further, RW1 testified that Rahul, the General Manager in issue was fired by the respondent because he did not handle workers' cases properly. RW1 testified that the claimant never stole fuel and Rahul injured the claimant at the time of the termination dispute.

RW2 testified that the claimant was paid Kshs.19,377.00 comprised of Kshs.7,000.00 being days worked, pay in lieu of notice being Kshs.10,000.00, leave pay Kshs.6,999.00, and less Kshs.4,622.00 being statutory deductions. RW2 testified that he did not know if the claimant stole fuel. RW2 confirmed that Rahul fired the claimant and there had been dissatisfaction by the claimant about the initial terminal dues of Kshs.11,000.00.

The only issue for determination is whether the claimant is entitled to the remedies as prayed for. The court makes findings as follows:

1. The court finds that the respondent terminated the claimant's employment without a notice and a hearing as provided for in section 41 of the Employment Act, 2007. Further, the court finds that the respondent's alleged reason that the claimant stole fuel was not established and as at time of termination, the respondent did not advance any genuine reason to terminate the employment. The court further finds that the termination was blended with the claimant's gross humiliation by the respondent's General Manager. The claimant was assaulted and as per the evidence by RW1, the claimant was injured in that process. Such were serious aggravating circumstances and the court awards the claimant **Kshs.120,000.00** being the maximum compensation of 12 months' gross salaries for the unfair termination. The court further finds that the claimant is entitled to the declaration that the termination was unfair and unlawful.
2. RW2 showed that the claimant was paid Kshs.10,000.00 in lieu of the termination notice and the court finds that the claimant is not entitled as prayed for.
3. The claimant was a member of the National Social Security Fund and the court finds that the claimant is not entitled to service pay at 1/12 for 6 years of service making Kshs.60,000.00 as prayed for. As submitted for the respondent, section 35(5) of the Employment Act, 2007 bars such payment in such circumstances.

In conclusion, judgment is entered for the claimant against the respondent for:

1. **A declaration that the termination of the claimant's employment by the respondent was unfair.**
2. **The respondent to pay the claimant Kshs.120,000.00 by 1.8.2014, failing, interest at court rates to be payable from the date of the judgment till full payment.**
3. **The respondent to pay costs of the suit.**

Signed, dated and delivered in court at Nakuru this Friday 11th July, 2014.

BYRAM ONGAYA

JUDGE