



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 1328 OF 2012

GEOPHREY OKELLO OTIENO.....CLAIMANT

VS

MINI BAKERIES (NAIROBI) LIMITED.....RESPONDENT

AWARD

Introduction

1. By a Memorandum of Claim dated 6th August 2012 and filed in Court on even date the Claimant sued the Respondent for unfair termination of employment. The Respondent filed a Memorandum of Reply on 18th June 2013 to which the Claimant responded by a Reply to Defence filed on 22nd January 2014.
2. The matter was heard between 12th February 2014 and 16th July 2014 with the Claimant testifying on his own behalf and the Respondent's Operations Manager, Badru Mohamed Omar testifying for the Respondent. The parties filed written submissions by September 2014.

The Claimant's Case

3. The Claimant was employed by the Respondent on 1st March 2001 as a Dough Maker at a monthly salary of Kshs. 6,304. He rose through the ranks to the position of Foreman earning a monthly salary of Kshs. 19,000 from 1st August 2007. On 8th August 2008, the Claimant was summarily dismissed on allegations of stealing 1,300 loaves, an allegation the Claimant denies.
4. The Claimant's claim is as follows:
 - a. 3 months' salary in lieu of notice.....Kshs. 66,000
 - b. Severance pay for 3 years.....Kshs. 78,076
 - c. Weekdays overtime at 5 hours per day.....Kshs.378,000
 - d. Salary underpayment.....Kshs.108,000
 - e. Public holidays worked.....Kshs. 65,988
 - f. Off duties.....Kshs.243,648
 - g. Saturday overtime.....Kshs. 151,200
 - h. 12 months' salary compensation for unfair termination.....Kshs. 64,000
 - i. Compensation for defamation.....Kshs 2,500,000
 - j. General damages.....Kshs.1,850,000
 - k. WASCOM savings plus interest
 - l. Certificate of service

m. Costs and interest

The Respondent's Case

5. In its Memorandum of Reply, the Respondent admits having employed the Claimant on 1st March 2001 at an initial monthly salary of Kshs. 6,304. On 31st July 2008, while the Claimant was the Production Foreman at the Respondent's bakery 1,300 loaves of bread disappeared.

6. The Claimant was therefore summoned to the Respondent's Head Office on 6th August 2008 for interrogation and investigation. The Claimant however ignored the summons and proceeded on his off days. The Claimant also declined to cooperate and assist with the investigations into disappearance of the loaves of bread. Consequently, he was summarily dismissed.

Findings and Determination

7. The issues arising from this case are as follows:

- a. Whether the Claimant's claim is statute barred;
- b. Whether the Respondent had a valid reason for terminating the Claimant's employment;
- c. Whether in effecting the termination the Respondent observed due process;
- d. Whether the Claimant is entitled to the reliefs sought.

Limitation of Action

8. In its written submissions filed on 18th September 2014, the Respondent states that the Claimant's claim is statute barred by dint of Section 90 of the Employment Act, 2007 which provides that:

“Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act, no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.”

9. The Employment Act, 2007 came into effect on 2nd June 2008 and the Claimant's claim which arises from the termination of his employment on 8th August 2008 therefore falls within the ambit of the Act. The cause of action having arisen on 8th August 2008, the Claimant ought to have filed his claim by 8th August 2011 which he failed to do and since no leave was sought from the Court his claim filed on 6th August 2012 is statute barred.

10. Limitation of action is a substantive point of law which must be addressed once raised. In light of the finding that the Claimant's claim was indeed filed out of time without leave of the Court, all the other issues raised in the claim are spent. The effect is that the Claimant's claim is dismissed.

11. Each party will bear their own costs.

Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 7TH DAY OF NOVEMBER 2014

LINNET NDOLO

JUDGE

Appearance:

Claimant in person

Ms Kirera for the Respondent