



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAKURU
CAUSE NO. 289 OF 2013

JOSEPHAT MAINA MURAI.....CLAIMANT

-VERSUS-

KAIMOSI TEA ESTATE LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 17th October, 2014)

JUDGMENT

The claimant filed the memorandum of claim on 30.08.2013 through Chepkwony & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. A declaration that the termination process as carried out by the respondent is unlawful and that during his employment with the respondent, he was not remunerated as required by law.
- b. Payment of the sums of money claimed under paragraph 9 above.
- c. Costs and interest.
- d. Any other relief the honourable court may deem fit to grant.

The respondent's memorandum of defence was filed on 18.09.2013 through Onyinkwa & Company Advocates. The respondent prayed that the claimant's suit be dismissed or struck out with costs to the respondent.

It is not disputed that the respondent employed the claimant by the letter dated 1.06.2010 to operate a machine used to pick tea leaves. Prior to that permanent employment the claimant had served for six months said to have been on casual basis. While at work the claimant was injured and the respondent refused to co-operate to compensate for the injuries. The claimant sued for the compensation. The claimant's testimony was that after complaining about and pursuing the compensation for the injuries, the respondent decided to fire him from employment. The circumstances were as follows.

On 4th and 3rd January 2013 the claimant was given permission to attend a requiem mass for a departed relative. He resumed work on Monday 07.01.2014 at 6.30am. Later that day the General Manager summoned the claimant and told the claimant that he had received summons in the case the claimant had sued for compensation in view of the injuries sustained at work. The general manager told the claimant at that meeting that the claimant could not mutilate the udder of the cow and continue enjoying the milk. The general manager asked the claimant to withdraw the civil suit or leave employment. The claimant

refused to withdraw as his claim was genuine. The general manager banged the table and told the claimant to leave his office and employment. The claimant filed the suit.

The respondent's case was that the claimant took the 2 days' off to attend a burial of a departed loved one and never returned to work. The respondent did not file the attendance register for 07.01.2013. The respondent's 2nd witness (RW2) Isaac Origi Kiplimo who was the shop steward confirmed that he was not aware of termination of the claimant and he was not aware of a disciplinary hearing or a termination letter. David Ng'etich (RW4) the respondent's Field Supervisor and the claimant's immediate supervisor testified that it was his duty to report the claimant's absence after a day's absence but he never reported such absence with respect to the claimant.

The respondent did not call the general manager to rebut the account by the claimant at the meeting the claimant was told to leave job. Taking all the evidence into account, the court finds that the claimant was verbally dismissed by the general manager as testified by the claimant and on account of the claimant's genuine grievance as per the suit the claimant filed to demand compensation for injuries sustained at work. The termination reason was not genuine and the termination was unfair under section 43 of the Employment Act, 2007 for want of a valid reason.

The court has considered that the claimant worked with due diligence and care, he wanted to continue in employment and was terminated upon a genuine complain and filing the suit for compensation. Such was not a fair reason for termination as envisaged in section 46 (h) of the Employment Act, 2007 and the court finds the termination was unfair for want of a valid reason. The court finds that the claimant is entitled to 12 months gross salaries for the unfair termination being **Kshs.107, 700.00** at Kshs. 8, 975.00 per month. The claimant is also entitled to **Kshs. 8, 975.00** being one month pay in lieu of the termination notice. The claimant was a member of the National Social Security Fund and is not entitled to service benefits as set out in the memorandum of claim. Finally, he is entitled to **Kshs. 3, 473.00** being pay in lieu of leave as claimed for.

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

1. The declaration that the termination of the claimant's employment by the respondent was unfair.
2. The respondent to pay the claimant **Kshs.120, 148.00** by 1.12.2014 in default interest to be payable at court rates from the date of this judgment till full pay.
3. The respondent to pay costs of the suit.

Signed, dated and delivered in court at Nakuru this Friday, 17th October, 2014.

BYRAM ONGAYA

JUDGE