



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 339 OF 2013

KENYA BUILDING, CONSTRUCTION, TIMBER & FURNITURE INDUSTRIES EMPLOYEES' UNION.....CLAIMANT

-VERSUS-

RAI PLYWOODS (K) LIMITED.....RESPONDENT

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

JUDGMENT

The claimant union filed the memorandum of claim on 11.10.2013 signed by Francis K. Murage, the claimant's General Secretary. The claimant filed the suit on behalf of its member Sarah Nasimiyu Wanjala (the grievant). The claimant prayed for:

- a) A declaration that the termination of the grievant was most unfair and unlawful.
- b) Kshs. 100, 124.00 being terminal benefits for the grievant.
- c) 12 months salary as compensation for unlawful loss of employment being Kshs.144, 456.00.

The response to the memorandum of claim was filed on 11.11.2013 through Kalya & Company Advocates. The respondent prayed that the claimant's claim be dismissed with costs.

The case went to full hearing. Taking the evidence into account, the facts of the case are clear.

The grievant was employed by the respondent as a general worker effective 13.12.2005. She was promoted to a weigh bridge clerk and she served in that office up to the date of her termination. As a weigh bridge clerk her duties entailed weighing vehicles bringing raw materials to the factory; weighing vehicles leaving the factory with finished goods; and availing relevant weigh bridge records as required by the management for various purposes including payment of the dues for loaders of fuel-wood stationed at the forest.

While the grievant was on her maternity leave, the respondent's management called her to report at the office to explain certain entries she had made at the weigh bridge. The explanatory meeting with the personnel officer was held on 1.08.2012. The evidence showed that on the basis of some of the irregular entries that were identified, the grievant had requisitioned Kshs.52,000.00 which she received from the respondent's finance office allegedly for paying loaders of the fuel-wood which had not been delivered to the respondent but the irregular entries had misleadingly suggested that the delivery had taken place.

The **1st issue** for determination is whether the termination was unfair. The court has considered the evidence. It is clear that the claimant was aware of the allegations that were levelled against her and she was given an opportunity to be heard in self exculpation but she failed to do so. Further the court finds that the reason for termination was valid as envisaged in section 41 of the Employment Act, 2007. Thus, the court finds that the termination was not unfair.

The **2nd issue** for determination is whether the claimant was entitled to reliefs as prayed for. The court makes findings as follows:

- a) As the termination was not unfair, the claimant is not entitled to the declaration that the termination of the grievant was most unfair and unlawful.
- b) The claimant prayed for Kshs. 100, 124.00 being terminal benefits for the grievant consisting of gratuity, unpaid leave for 5 years; pay in lieu of notice and 3 months maternity leave. First, the claimant is not entitled to gratuity as the justification has not been established and the grievant was a member of the National Social Security Fund. Second, there was no evidence and submissions on the issue of leave for 5 years and the 3 months' maternity leave and the court finds that the prayers were not established. The termination was not unfair and the claimant is not entitled to pay in lieu of the termination notice.
- c) As the termination was not unfair, the claimant is not entitled to 12 months salary as compensation for unlawful loss of employment being Kshs.144, 456.00 as prayed for.

In conclusion, judgment is entered for the respondent against the claimant with orders that the memorandum of claim is dismissed with costs.

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

BYRAM ONGAYA

JUDGE