



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 15 of 2011

KUDHEIHA WORKERS CLAIMANT

VERSUS

NAIROBI SAFARI CLUB RESPONDENT

J U D G M E N T

This matter was initially heard by my predecessor Hon. Justice Kosgey and upon invitation to the parties for directions on how to proceed with the final disposal of the case only the claimant appeared and gave no objection to the court proceeding to prepare a judgment based on evidence and testimony of the claimant who apparently was the only witness called in this matter.

According to the memorandum of claim filed on 2nd June, 2011, the claimant avers that he was employed by the Respondent in 1984 initially as a receptionist and was subsequently promoted to several positions culminating with the post of a store keeping supervisor where he served until his dismissal on 15th May, 2006.

The reason for his dismissal was that he was found trying to dispose of a new printer cartridge disguising it as a used cartridge. Prior to his dismissal he was suspended to allow investigation into the matter.

According to the respondent, investigations established that indeed the cartridge the claimant attempted to dispose of was in fact new and not used. Investigations further established that the claimant had tampered with requisition books for one of the respondent's departments and a total of 14 cartridges could not be accounted for. Subsequent upon the claimant's dismissal the joint Industrial Council constituted a sub committee to investigate the matter.

The committee received representations from claimant and the respondent. The sub committee was informed that the claimant was summarily dismissed because he was caught with a new cartridge ready to dispose of it as a used one and upon further investigation it was established that 14 cartridges were missing over the period June 2005 to May, 2006. The management further established that the claimant altered the original requisitions in order to account for cartridges not used.

According to the union, they sought that leniency be extended towards the claimant as it was human error that a new cartridge was discovered among used ones ready for disposal.

The union urged the management to consider that the claimant had worked for 22 years and he had no similar incidence during the long service. The union therefore pleaded that the claimant be reinstated to his job.

The sub committee of the joint Industrial Council concluded that the claimant was involved in the

incident where a new cartridge would have been disposed of as used. The sub committee further found that the claimant could not escape responsibility for loss of 14 other cartridges over the period of June, 2005 to May, 2006 when he was dismissed.

The sub committed however recommended that the action of summary dismissal should be reduced to normal termination for the reason that gross misconduct was not proved beyond reasonable doubt and that the loss suffered by the respondent could not be attributed to the claimant alone. These recommendations were rejected by the respondent despite being repeated by conciliator appointed by the Ministry of Labour.

Grounds for summary dismissal have been elaborately stated under Section 44 of the Employment Act. The Section, 44 (3), provides that an employer may dismiss an employee summarily when the employee has by his conduct indicated that he has fundamentally breached his obligations arising under contract of service. Subsection (4) of the said section enumerates grounds upon which an employee may be summarily dismissed. These include:-

- (a) an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the detriment of his employee or his employer's property.

It is reasonably clear that the claimant attempted to dispose of a new cartridge pretending it was used. His action of attempting to run back with it to the store when found by the security could reasonably be construed as an act of guilty mind. If indeed he was mistaken that the cartridge was a used one, there was no need for him to run away from security.

The court sympathizes with the claimant in that he had given over twenty years of service to the respondent for which he earned promotion and several service awards but employment is a relationship of trust which must be observed at all times. To engage in acts of dishonesty is a breach of that trust and goes to the root of the employment relationship itself.

Ordinarily where circumstances are unclear the court may be inclined to reduce summary dismissal to normal termination with benefits but this is not the case here. The claim therefore fails in its entirety and is hereby dismissed with costs.

The respondent had however indicated that it was prepared to pay the claimant his final dues upon return of all hotel's property in the claimant's possession (letter dated 19/5/2006 appendix 1), these are ordered paid immediately if not already done. The respondent shall further issue the claimant with a certificate of service as required by Section 51 of the Employment Act.

Apart from as ordered above this claim fails and is hereby dismissed with costs.

It is so ordered.

Dated at Nyeri this 30th day of January, 2013.

**Abuodha J. N.
Judge**

Delivered this 13th day of February, 2013.

Delivered in open Court in the presence of

**for the Claimant and for the
Respondent.**

**M. Onyango
Judge**