



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 1521 of 2012**

**RODGERS OBANDA .....CLAIMANT/APPLICANT**

**VS**

**WESTERN SEED COMPANY LTD .....RESPONDENT**

**JUDGMENT**

The claimant herein Rodgers Obanda filed his Statements of Claim before this court on 27.8.2012. He claims wages due and owing to him from the respondent herein. Through his Memo of Claim, he told court that he was employed by the respondent since 1993 as a clerk without any written contract but only signed a contract in 2008. He further told court that he offered the respondent exemplary services and on 1st July, 2010 he entered a 3 year contract with the respondent in the position of Processing Manager at a salary of Ksh 30,000/= only all inclusive. The contract was to expire on 30th July, 2013.

The claimant further avers that on 19/11/2011 while at his work place, an officer from KEPHIS visited the Company's godowns and discovered damaged seeds. The seeds were inspected jointly by the KEPHIS officer and the claimant and the officer recommended that the seeds be destroyed because they were condemned unfit neither for use nor for sale in all aspects. The claimant being his duty to ensure proper sanitation as per his job description, he ensured the seeds were eventually destroyed under the supervision of the KEPHIS officer. The claimant further state that the respondent had prior knowledge that the seeds were destroyed as per the procedures laid down in the Seed and Plant Variety Act Cap 326 LOK.

However, the claimant states that on 24/11/2010, the respondent's employee who was newly employed procedurally summoned the claimant and required an explanation concerning the destroyed seeds. The claimant was instructed to fill the Events Form stating the reasons as to why he destroyed the seeds. The claimant gave a chronology of the events stating that he destroyed the seeds on the instructions of KEPHIS and it was a close for the Godowns so that the weevils could not attack or infect the new seeds that were to be stored in that particular store.

The claimant states further that on 26/11/2010 after filling the Events Form, on 24/11/2010, the respondent purported to suspend him by a letter signed by the new employee, a matter claimant did not understand. The claimant later approached the respondent's office to see whether the suspension could be lifted or whether he could be paid his salary either in half or full, but the respondent adamantly refused to lift the suspension. The claimant further states that he had worked for the respondent well and had never been involved in any questionable issues for the 17 years he served and therefore the purported suspension was malicious and was made in bad faith.

The claimant also gave oral evidence in court and he reiterated what he had stated in his pleadings. In cross – examination by counsel for respondent he told court that he was entitled to leave even if he had not completed a year. He says the seeds were not deliberately destroyed by him but were destroyed as they were damaged and useless. He indicated that he is answerable to the CEO but then the CEO was out of the Country. He told court that as per his contract of employment, he maintains cleanliness and he cannot do this without destroying what is damaged. He says he used workers to carry the damaged seeds to the ground where they were destroyed. He says he was suspended from work as per the Events Form. He also says that he never met the CEO since then as he was not allowed to see him. He however talked to him and the CEO said they were still investigating the matter. He admits he was paid salary for December, 2010 and some money for January, 2011 but says he didn't suspend himself. He says he never wrote a letter appealing to this suspension.

Following this suspension, the claimant states that he suffered seriously even failing to pay a bank loan that he had taken. He now seeks orders as follows:-

- 1. An order that the suspension from employment was unlawful and that he deserves compensation.**
- 2. An order for the respondent to pay him for breach of contract of the 2 ½ years till 30th July, 2013.**
- 3. 3 months pay as a notice of intention to terminate as per the contract.**
- 4. Leave allowance for three years from 1st July, 2010 to 30th July, 2013.**
- 5. 15 days payment for each successful year completed as gratuity as per the contract.**
- 6. Costs of the suit and interest.**
- 7. Any other relief the court may deem fit and just to grant.**

The respondent on the other hand filed their defence and counter-claim on 20<sup>th</sup> September, 2012 through the firm of Sifuna & Sifuna Advocates. They also called one witness, the respondent's CEO. In their defence, the respondents admitted having employed the claimant as a Processing Manager at a salary of Ksh 30,000/= per month. They however averred that on 24/11/2010, the claimant without knowledge and permission of the respondent's senior management and/or in contravention of the company's procedures and regulations destroyed the respondents' seeds. That the claimant even admitted this mistake and he was suspended from work for one day to give way for investigation. The claimant was expected to report back to work on 29/11/2010. The respondent denies sending the claimant away indefinitely and avers that the claimant absconded and deserted duty from then to-date. That they directed him to resume duty and paid his November and December, 2010 salaries but he didn't.

The respondent contend that this action of absconding was in violation of the Employment Contract and Labour Laws and now the claimant wants to use his unlawful conduct to enforce payment of terminal dues. The respondent also counter claim for payment of moneys paid to the claimant amounting to 44213 being 30,000/= salary for the month of December, 2010 and 14213 paid to the National Bank of Kenya as an advance to the claimant.

The respondents witness further told court that he had a good working relationship with the claimant and when the incident occurred, he was out of the Country. On coming back he had a meeting with the claimant and claimant was asked to come back to work.

The parties have also filed their respective submissions where they have reiterated their evidence with claimant insisting he was wrongfully dismissed and should be paid his duties. The respondent on the other hand insist that this is a case of insubordination and abscondment of duty and therefore the respondents case should be dismissed and the counter-claim allowed.

Having considered evidence and submission of both parties, the issues for determination are as follows:-

- 1. Whether the action of destroying seeds by the claimant was an act in contravention of his duties and therefore against his contract of employment.**
- 2. Whether the claimant was dismissed by the respondent or he absconded duty.**
- 3. Whether the claimant's prayers are tenable given answers to the above two questions.**
- 4. Whether the respondents' counter claim is tenable given answer to the above three questions.**

In answer to question no. 1 above, I will consider the contents of the employment contract between the claimant and respondent. The employment contract has been exhibited herein as annexure No. 9 (claimant's annexures). The salary attached to this employment was Ksh 30,000/= per month including house allowance. The claimant was also entitled to among other benefits; 3 months' notice before termination of the contract. His job description included the following:

**“The purpose of this job is to oversee quality assurance processing, reprocessing, packaging and repackaging of all seed and commercial products produced in the Company and ensure compliance to the Seed and Plant Varieties Act ---”**

Among his typical job duties as he mentioned to court included:-

**“Maintain high level of cleanliness, and organization in all places of work especially raw materials and seed storage areas-”**

The claimant averred that ensuring cleanliness included destruction of damaged seed to avoid contamination of new seed brought in.

The claimant was also expected to ensure compliance with the provisions of the Seeds and Plant Varieties Act Cap 326 LOK. Under Section 18 (8) and (9), it is provided that;

**“(8) A seed inspection or seed analyst shall on annual basis, conduct sampling and re-testing of all seeds stored for sale by licensed sellers and shall issue an order to stop sale in respect of seed-lots where germination capacities are below the minimum prescribed standards---**

**(9) Where an order to stop sale under paragraph 8 is issued, the merchant shall retrieve the effected seed lots from all agents, sub-agents and stockists and shall destroy all such seeds”**  
(emphasis is mine)

The claimant averred that he destroyed the seeds in question in compliance with the requirement that all damaged seeds be destroyed. This was done under the supervision of an officer from KEPHIS who is responsible for this seed analysis. A certificate for this destruction was accordingly issued by KEPHIS as indicated in annexure 8 (claimant's documents). Given that it was the duty of the claimant to keep respondents' premises in sanitary condition, and given that it was part of his duty to ensure compliance with the Seed and Plant Varieties Act, it follows that it was in order for him to destroy the damaged seed as ordered by the seed analyst from KEPHIS. I do not find that he was obliged to tell the other officers of this action as his letter of contract indicated that he was to report directly to the Operations Manager who was then away and the Act had to be complied with.

Now, in answer to question 2, the events that followed this destruction was a requirement by the respondent that the claimant fills up an Events Form detailing what had transpired. In the form, his HOD recommended that in future the claimant should be careful to destroy any kind of material.

However, the administration thought otherwise. According to the administration what the claimant

had committed was extremely serious as he failed to inform any of his seniors and therefore it was recommended he be suspended till further notice from 26/11/2010. The respondent has not denied that indeed it was recommended that the claimant should be suspended until further notice. The DW1 indicated that indeed, the claimant was suspended but only for one day. Documents to indicate this one day suspension have not been exhibited to this court. However there is an alleged leave form (Exh 5 – claimant’s documents) showing that claimant applied for leave and was to report back to work on 31/12/2010. This document is not filled by claimant but it is signed by respondent showing mischief and bad faith on respondent's part. This may well explain why respondent paid the claimant his December 2010 pay as a cover-up that he was on leave.

He was never paid his salary thereafter. The allegation that claimant absconded duty therefore fails as there appear to be a bad motive on the part of the respondent insisting that claimant was on leave. Even money paid Ksh 14,213 to the National Bank was delivered not by the claimant but by one Robinson Kalama indicating that the claimant was not directly involved in this arrangement. I therefore find that indeed claimant was dismissed as he told court and he did not abscond as indicated by the respondent.

Given that claimant was unfairly dismissed by the respondent for actually doing his work, are his prayers tenable? In answer to this, I say yes and I accordingly award the claimant and order as follows:-

**1. The suspension from employment of the claimant by the respondent was unlawful and I convert it into a normal termination.**

**2. Claimant be paid 3 months salary in lieu of notice – 30,000 X 3  
= 90,000/=**

**3. The claimant be paid 1 month's salary as gratuity for the period worked = 30,000/=**

**4. Claimant be paid leave prorated for the period**

**worked = 1 ½ days leave X 6 months= 7.5 days of**

**21 days  
= 10,500/=**

**5. Claimant be paid 12 months salary as compensation for wrongful termination - 30,000 X 12  
= 360,000/=**

**6. Costs of this suit.**

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**GRAND TOTAL  
= 490,500/=**  
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The respondents counter-claim is dismissed accordingly.

**HELLEN WASILWA  
JUDGE  
11/02/2013**

**Appearances:-**

CC. Sammy Wamache  
Claimant – present in person

Mr. Sifuna of Sifuna & Sifuna Advocate for Respondent.