



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 60 OF 2011

BETWEEN

DAVID KITONGU MUTOONI.....
.....CLAIMANT

VERSUS

KENYA PIPELINE CO. LTD.....
.....RESPONDENT

Rika J

CC. Leah Muthaka

Mr. Odhiambo instructed by Menezes & Odhiambo Associates, AdvocateS for the Claimant

M/s. Peke instructed by Lilan & Koech Associates, Advocates for the Respondent

ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

AWARD

The Claimant was summarily dismissed by his former employer the Respondent herein, on 15th October 2003, after being heard by the Central Region Staff Disciplinary Committee. He was found guilty of presenting false medical claims.

He appealed against summary dismissal on 21st October 2003. The company wrote to him on 28th November 2003, calling on the Claimant to provide further support for his Grounds of Appeal.

The Claimant forwarded a sworn affidavit, but was informed by the Respondent, in a letter dated 5th December 2003, that the Appeal was not justified.

The Claimant filed his Statement of Claim on 19th January 2011, seeking:-

- (a) 3 months' salary in lieu of notice at
Kshs.248,433;
 - (b) Severance pay at 15 days' salary for each year worked atKshs.621,082.50;
 - (c) Leave allowance for 2003 at.....
Kshs.82,811;
 - (d) Unpaid salary for 15 days worked in October (unspecified year) atKshs.41,405;
- SUB-TOTAL.....Kshs.993,732***

He also prays for general damages for malicious and wrongful termination, cost and interests.

The Respondent filed a Statement of Reply on 24th February 2011, and a Supplementary list and Bundle of Documents on 7th December 2011.

The Claimant gave evidence on 2nd September 2011, and 3rd December 2012 when he closed his case.

The Respondent gave evidence through its Human Relations Officer, Ezekiel Kandargor, closing its case on 27th March 2012.

There was a long lull in the proceedings from 27th March 2012 to 6th June 2013, occasioned by the re-organization of the Industrial Court under the new Constitution in 2012. The matter was last mentioned

on 6th June 2013, when the Court advised the parties the Award would be delivered on notice.

Upon considering the pleadings, evidence and submissions of the parties, *the Court Finds and Orders:-*

1. The Claimant was summarily dismissed on 15th October 2003. He appealed against the dismissal decision on 21st October 2003. The Respondent communicated to him on 5th December 2003, advising the Claimant that his Appeal was not justified. The Claimant filed the Statement of Claim on 19th January 2011, 8 years after he lost the Appeal on summary dismissal.

2. His Claim is not properly before the Court. The cause of action arose before the coming into force of the Employment Act and the Labour Relations Act both of 2007. Summary dismissal and unfair termination claims arising before the coming into force of the Labour Relations Act, are filed and heard under the procedure established by the repealed Trade Disputes Act Cap 234 the Laws of Kenya. Section 84 of the Labour Relations Act, Schedule 5, outlines the procedure the Claimant should have followed.

3. The Claimant did not make it clear to the Court what substantive law he relies on, in bringing the Claim. If it is the repealed Employment Act Cap 226 the Laws of Kenya, the Claim would be Statutory barred under the Limitation of Actions Act Cap 22 the Laws of Kenya. If there is any chance he invokes the repealing Employment Act 2007, the Claim would be barred under the inbuilt Law of temporal limitation, contained in Section 90 of the Act. *For these reasons:-*

(a) *The Claim is hereby disallowed with no order on the costs;*

Dated and delivered at Nairobi this 28th day of June 2013

James Rika

Judge