



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**

**CAUSE NO. 802(N) OF 2009**

**KENYA PETROLEUM OIL WORKERS UNION..... CLAIMANT**

**v**

**GULF RETAIL COMPANY (K) LTD ..... RESPONDENT**

**JUDGMENT**

1. Kenya Petroleum Oil Workers Union (Union) filed a Claim against Gulf Retail Company (K) Ltd on 17 December 2009 and the issue in dispute was stated as *wrongful termination of Mr. Abas Ali*.
2. The Respondent through Federation of Kenya Employers filed a Response on 21 April 2010 after which the parties were heard by Chemmutut J. on 3 March 2010. The Judge indicated that he would deliver an award on notice. However, the Judge ceased holding office in 2012 before he could deliver the award. The delay is regretted.
3. On 4 July 2013 Mr. Olala for the Union and Mr. Ombok for the Respondent agreed that I could proceed to prepare and deliver a judgment based on the pleadings and proceedings taken before Chemmutut J. Rule 21 of the Industrial Court (Procedure) Rules, 2010 envisage the Court making a determination based on the pleadings, affidavits, documents and submissions filed by the parties subject to their agreement.

**Union's case**

4. The Union pleaded that the Grievant Abas Ali was employed by the Respondent on 1 July 2007 as a pump attendant at a monthly wage of Kshs 8000/-.
5. On 28 June 2009 the Grievant incurred a shortage of Kshs 1000/- and was sent home to bring the money. The next day the Grievant informed the Union about the same but attempts to solve the issue with the Respondent's Human Resources Manager did not succeed.
6. On the night of 7 July 2009 the Grievant fuelled two vehicles with fuel worth Kshs 12,000/- but while in the course of verifying the money, the two vehicles were driven off. The Grievant realized that the cash he had been given were fake and informed his Supervisor and Manager, and also the Police at Shauri Moyo Police Station. The fake cash was surrendered at the Police Station.
7. The next day the Respondent's station manager informed the Grievant he would be deducted Kshs 4,000/- each month to make good the loss of Kshs 12,000/-.
8. On 30 July 2009, the Grievant was sent away with no written dismissal letter and again attempts by the Union to solve the issue did not succeed forcing the Union to report a trade dispute to the Minister on 2 July 2009. The report prompted the Respondent to reply, stating that the Grievant had not been dismissed and that he owed the Respondent Kshs 13,000/-
9. On 9 July 2009, the Grievant wrote to the Respondent seeking for a meeting. The meeting did not resolve the dispute and the Union moved to court alleging wrongful termination of the Grievant and seeking pay in lieu of notice, house allowance, pro rata leave, certificate of service and maximum compensation

## Respondent's case

10. The Respondent pleaded that the Grievant absented himself from work on 16 March 2009 for one month and returned only on 15 April 2009. The Grievant had apparently gone to look for guarantors.
11. On 25 June 2009 the Grievant incurred a shortage of Kshs 1244/- and left to look for money to repay the shortage but he did not return until 6 July 2009. On 10 July 2009, the Respondent wrote to the Grievant a summary dismissal letter on the ground that he had not reported for duty from 26 June 2009. Reference was also made to Grievant's absence from duty between 17 March 2009 to 16 April 2009 and the cash shortage of Kshs 13,243/-. The Grievant refused to acknowledge the dismissal letter despite a meeting with the Respondent's officers on 10 July 2009.
12. The Respondent offered to substitute the Grievant's summary dismissal into normal termination with pay and also to pay the Grievant pro rata leave, days worked if any and issue a Certificate of service.

## Evaluation

13. It is not in dispute that the Union and the Respondent at the material time did not have a recognition agreement or Collective Bargaining Agreement.
14. I would have been minded to dismiss the Cause on the basis of lack of locus standi because there was no privity of contract between the Union and Respondent even by operation of law (no recognition agreement or Collective Bargaining Agreement) save for the admission by the Respondent that it was ready to convert the dismissal into normal termination.
15. The Union and the Respondent have not disputed that the Grievant received Kshs 12,000/- fake currency and that a report was made to the Police.
16. The Union did not challenge or respond to the Respondent's assertions that the Grievant had been absent from work from 16 March 2009 to 15 April 2009. It is also not disputed the Grievant had unsuccessfully looked for persons to guarantee him, a requirement of the Respondent to employ him, because of the cash he would be handling on a daily basis. The shortages were also not denied.
17. An employment relationship is one of mutual trust and confidence. The Grievant had been given ample time to look for a guarantor. He was often absent without communication to the Respondent.

## Conclusion and Orders

18. In the circumstances and considering the Respondent's offer to him, the order which commends itself to me is to substitute the summary dismissal with termination with pay in lieu of notice. The Respondent had also agreed to pay any outstanding leave.

19. I award the Grievant

- |                                    |              |
|------------------------------------|--------------|
| a. One month pay in lieu of Notice | Kshs 8,000/- |
| b. Accrued 7 months leave          | Kshs 4,308/- |

TOTAL **Kshs 12,308/-**

20. The Respondent to issue the Claimant with a Certificate of service.
21. There will be no order as to costs.

22. The Deputy Registrar to transmit the file back to Nairobi after delivery of this judgment.

**Delivered, dated and signed in Mombasa on this 23<sup>rd</sup> day of August 2013.**

**Justice Radido Stephen**

**Judge**

## **Appearances**

Mr. Olala Branch Secretary, Mombasa

Kenya Petroleum Oil Workers Union for Union/Grievant

Mr. Ombok instructed by

Federation of Kenya Employers for Respondent