



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 1353 OF 2012

KENYA CHEMICAL & ALLIED W. UNIONCLAIMANT

-VERSUS-

LEATHER LIFE EPZ LIMITEDRESPONDENT

Mr. Mweke for the Claimant.

Mr. Mutinda for the Respondent

JUDGMENT

The suit is brought by the Kenya Chemical and allied Workers Union on behalf of two Grievants:

1. Mrs. Jacinta Akoth Arogo and
2. Mr. Stephen Kamau Mbatia

against the Respondent Leather Life EPZ Ltd.

Mrs. Jacinta Akoth Arogo (1st Grievant).

Facts on which her case is premised are that she was employed by the Respondent as a Secretary in December, 2008 earning a monthly salary of Kshs.16,000/=. Her salary was increased to Kshs.16,294/= per month upon confirmation on 6th January, 2009.

On 24th August, 2010, she was promoted to the position of Senior Administration Assistant and her salary was revised to Kshs.16,969/= back dated to the 1st of May, 2010. Her pay slip is annexed as Appendix 2 to the Statement of Claim. The employer deducted National Health Insurance Fund (N.H.I.F) and National Social Security Fund (N.S.S.F) dues and remitted on her behalf.

On 27th January, 2011, she worked as usual and when she was preparing to leave work the Executive Director called her to her office and enquired why a shipment due for India had not gone. The 1st Grievant explained the circumstances of the delay due to late signing by the Respondent's signatories to the contract documents for shipping with its Shipping Agency, **Damco Agencies** to allow the Agency to procure the shipment on time.

Secondly, the Respondent had failed to pay Damco Agencies their fee in full on time. The Grievant however assured the Executive Director that the consignment would leave with the next ship if the two

issues are sorted out.

The Executive Director started to quarrel the 1st Grievant bitterly and asked her eventually not to report to work the following day on 28th January, 2011 and that her employment was terminated.

She was not given any dismissal letter. She had no warning letter at all for the period she served the Respondents.

The Claimant states that the dismissal of the 1st Grievant was wrongful and unfair and she is entitled to maxim compensation for the unlawful dismissal and payment of her terminal benefits including notice pay and in the alternative, the Grievant be reinstated with full pay.

Mr. Stephen Kamau Mbatia (hereinafter 2nd Grievant)

This Grievant was employed on 17th January, 2009 by the Respondent as an accountant. He was not given a letter of appointment. His monthly consolidated salary was Kshs.25,000/= . On 24th August, 2010 his salary was reviewed to Kshs.26,250/= effective 1st May, 2010 which composed of Kshs.22,826/= basic pay and Kshs.3,424/= house allowance.

On 25th August, 2011, the 2nd Grievant received a warning letter for rude behavior to his superiors in which he was reminded of verbal warnings on the same issue.

An email dated 26th August, 2011 is attached. It was written by the 2nd Grievant explaining the circumstances that were misconstrued by the Managing Director as disrespectful.

On 29th August, 2011, the Managing Director wrote another warning letter to the 2nd Grievant in response to the letter of 26th August, 2011.

The 2nd Grievant wrote to the union pleading for protection from constant harassment. One such letter is dated 28th August, 2011 marked Appendix 5 and another dated 1st September, 2011.

On 15th September, 2011, the 2nd Grievant received a letter of summary dismissal pursuant to **Section 44 (e) (d) and (g)** of the **Employment Act Cap 226** Laws of Kenya. The Grievant was informed that the Respondent had made a report about him to the police for investigations which may result in criminal prosecution emanating from his conduct in the course of his duties in the company.

The Claimant union wrote to the Respondent on 16th September, 2011 and 17th October, 2011 regarding the unlawful dismissal of the two Grievants. A dispute was reported to the Ministry of Labour in terms of **Section 62 (1)** of the **Labour Relations Act, 2007**. Conciliation did not bear fruit and the matter was referred to court.

It is the Claimant's submission that the 1st Grievant was dismissed for a mistake she did not commit while the 2nd Grievant was constantly harassed and eventually dismissed for a non-existent offence.

They both claim reinstatement and in the alternative compensation.

The Respondent was served with the Memorandum of Claim and filed a response on 31st October, 2012. In response to the case of the 1st Grievant, **Mrs. Jacinta Akoth Arogo**, the Respondent submits that she worked from 2009 to January, 2011 and that her termination was done procedurally as per the **Employment Act Cap 226** of the Laws of Kenya.

The court notes however that the said Act was long repealed and replaced by the **Employment Act, 2007**.

The Respondent accuses the 1st Grievant of failing in her duties. No formal warning letter was presented to court with particulars of her non-performance. The specific allegations made in the Statement of Claim regarding circumstances of her dismissal have not been specifically addressed and thus the same remain largely uncontroverted.

It is stated that the main reason for her termination is that she deserted duty on 28th January, 2011. This allegation is not substantiated by any documentation. Furthermore, the Respondent adds that the 1st Grievant could not have been given a hearing or opportunity to explain her case since she had absconded. This is also said to be the reason for not giving her notice.

The conciliation report dated 22nd February, 2012 recommends that the 1st Grievant's termination be reduced to a normal termination with full statutory entitlements and she be paid 10 months' salary as compensation for wrongful termination. The court agrees with this recommendation taking all the circumstances of the case into account.

With respect to the 2nd Grievant **Stephen Kamau Mbatia** the Respondent accuses him of having an inflated ego and would insult his bosses regularly and was warned verbally and in writing. That the Respondent was entitled to terminate his services in terms of **Section 44 (d) and (e)** of the Employment Act.

The conciliation report confirms the facts leading to the Grievant's dismissal and that he was not accorded an opportunity to explain his case before he was summarily dismissed.

The Labour Officer found that the allegations against the 2nd Grievant were generalised without any specifics. The court entirely agrees with these observations by the Labour Officer.

What is worse he was dismissed for undisclosed criminal conduct as per the letter of termination.

The court clearly finds that the Respondent has not established a justifiable reason for the summary dismissal of the 2nd Grievant.

The court agrees with the recommendations by the Ministry of Labour, conciliator Mr. P. N. Macharia that the summary dismissal of the 2nd Grievant be reduced to a normal termination with full statutory benefits and that he be paid 10 months' salary for the unlawful and unfair dismissal.

For the avoidance of doubt, the Respondent has not satisfied the dictates of **Section 47 (5)** of the Employment Act in that it has failed to discharge its burden of justifying the grounds for the dismissal of the two Grievants.

On the converse the claimant has established that the wrongful dismissal of the two Grievants took place.

The court has accordingly found that the summary dismissal of the two was contrary to **Section 45 (2) (a) and (c)** in that the dismissals were not for a valid reason and were not in terms of a fair procedure. The dismissals were therefore substantively unlawful and procedurally unfair.

The court orders that each of the Grievants be paid:

1. One month salary in lieu of notice
2. 10 months' salary being compensation for the unlawful and unfair dismissal as follows:

Jacinta Akoth Arogo

1. Notice pay: Kshs.16,968/=.
2. Compensation: Kshs.169,680/=.

Total: Kshs.186,648/=.

Stephen Kamau Mbatia

1. Notice pay: Kshs.26,250/=.
2. Compensation: Kshs.262,500/=.

Total: Kshs.288,750/=.

The Respondent to pay cost of the suit.

It is so ordered.

Dated and delivered at Nairobi this 6th day of September, 2013.

MATHEWS N. NDUMA

PRINCIPAL JUDGE