

REPUBLIC OF KENYA

THE JUDICIARY

IN THE INDUSTRIAL COURT OF KENYA

CAUSE NO. 659 OF 2012

JARED OSUR OGAK.....CLAIMANT

VERSUS

ATHI RIVER PLANT LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant Jared Osur Ogak sued his erstwhile employer Athi River Plant Limited. In his Memorandum of Claim he stated that on 8th November 2011 the Respondent's Personnel Manager summarily dismissed him on alleged grounds of misconduct. The Claimant averred the so called "unprofessional behavior" was an honest attempt by the Claimant to explain to his immediate supervisor Mr. Pawen Kumar why the Claimant and his colleague had not .
2. He thus claimed unpaid salary for October 2011 at 10,950, the one month notice of Kshs. 10,950/= plus 12 months compensation. He had received 9,695/= which he deducted from the claim leaving a balance of Kshs. 143,525/=.
3. The Respondent denied the claim and filed a Statement of Response. In it, the Respondent stated the Claimant was dismissed under section 44 of the Employment Act for gross misconduct. Particulars of the gross misconduct were set out in the Statement of Response. The Claimant was paid his terminal dues which were received on his behalf by an agent Apollo Kisambo Matias who signed that the Claimant had no further claims.
4. The Claimant testified and stated that he was dismissed without cause. He submitted sending someone to collect his dues. He claimed he was not paid in October 2011. In cross examination he admitted that he was assigned duties and together with his colleague had failed to clear the metal pipes. He stated that he was asked why he had not completed the task and the explanation he gave was that he did his best and the load was too much. They were dismissed. He denied taking advance but admitted the agent he sent to collect his dues was Apollo Kisambo. He admitted signing some documents which he had previously denounced. In re-exam he reiterated the documents without his signature were not signed by him.
5. The Respondent called HR Officer who testified that the Claimant and one of his colleague had started arguing with Mr. Pawan and that they pushed the supervisor who came and complained to the witness. He summoned the two staff members who appeared with other colleagues and he listened to both Pawan and the staff accused of pushing Pawan. The Claimant became upset and said he would not work as he had been given work which was not for a welder. The HR officer sent off the rest and remained with Jared (the Claimant) and Chege plus the union representative. Jared was adamant and unremorseful and asked for his pay which the HR officer asked him to collect in November. This was to allow for calculation of dues by account. He confirmed the Claimant signed for and received an advance for 3,000/=.
6. In cross-exam he stated that the Claimant was paid 9,430 as dues while the other colleague got 10,139.22. The person the Claimant authorized to collect his dues was Apollo as the Claimant said he had travelled up country. The witness denied that he forged the signatures of the staff. He

stated the Claimant came and collected his dues on 14th November 2011.

7. The parties submitted written submissions each restating their position and the evidence of claim and the Respondent's Statement of Response have been instrumental in this determination.

The Claimant came across as a somewhat deceitful person. He lied that he did not sign the documents in question yet when the Court looked at his verifying affidavit the signature was the same as that on the documents exhibiting receipt of dues. The signature on the full and final payment was the short version of his signature yet he blatantly denied signing that and the advance he took. The HR officer was forthright in his testimony and narrated how the Claimant was accorded a hearing in presence of the union representative and his colleagues. The Claimant insisted on a separation and said he would not do menial jobs.

8. The Claimant failed to prove his claim on a balance of probabilities as his testimony was not consistent, truthful or corroborated by documentary or other evidence. The claim is dismissed with costs to the Respondent.

It is so ordered.

Dated and delivered at Nairobi this 8th day of November 2013

Nzioki wa Makau

JUDGE