



REPUBLIC OF KENYA
THE JUDICIARY
IN THE INDUSTRIAL COURT OF KENYA
CAUSE NO. 1529 OF 2010

CHARLES ONDIEKI ONG'ONDO.....CLAIMANT

VERSUS

G4S SECURITY SERVICES KENYA LTD.....RESPONDENT

JUDGMENT

1. The Claimant herein was an employee of the Respondent G4S Security Services Kenya Limited. He worked from 1st March 2003 as a security system crew. He initially was based in Watamu and Malindi before transfer to Nairobi. He thus had served for about 7 years at time of his dismissal.
2. The Respondent with whom the Claimant had an employee-employer relationship confirmed the Claimant was its employee and he was summarily dismissed on 16th September 2010.
3. The Claimant sought August salary, 16 days worked, notice pay, severance pay, 63 days pending leave and compensation for 12 months for loss of employment. In the memorandum of Reply, the Respondent tabulated the Claimant's dues as 16 days worked in September 2010, 20 days entitlement, 12 hour public holiday overtime, 16 days house allowance, travelling allowance 425/=, Responsibility allowance amounting to Ksh. 12,125/= less tax of 3,432/= and a loan for Nyati Co-operative of 20,614/=.
4. The Respondent did not however mount a counter-claim for Ksh. 24,182/= due to it from the Claimant. The claim was thus so pleaded.
5. The Claimant testified before me on 4th June 2013. He testified that the employment with Respondent was smooth until an incident at Petrol Oil on Jogoo Road. He stated that on 15th September 2010 he was at Petrol Oil on Jogoo Road where the Claimant in the company of a driver and one other employee of the Respondent had gone to collect cash for banking. The 2 staff of G4S had counted the cash and a shortage of Ksh. 7,000/= discovered. At the time he worked in the Cash In Transit (CIT) Unit of the Respondent. He stated that to resolve the matter he gave the client the 7,000/= he had and the client was to give him 2,000/=. He admitted receiving a letter from the HR Department of the Respondent and shortly a dismissal letter. He appealed against the dismissal and the dismissal was upheld. He testified that the dismissal took place on the next day

after presenting his side of the story.

He stated in his testimony in chief that he had a representative but the representative's entreaties were not considered. He stated he did not receive any letter before the disciplinary process and termination on 16th September 2010.

6. In cross examination by the Respondent's counsel, the Claimant testified that when the shortfall of 7,000/= occurred, the Claimant and his colleague a Mr. Githinji all emptied their pockets and Githinji had 100/= and the Claimant had 7,100. He stated the disciplinary proceedings were on 16th September 2010. He was not assigned duties on 26th September 2010 as he was on standby due to the pending disciplinary case. He stated shopstewards were at the meeting. He stated that he should not have been dismissed.
7. In re-exam by Mr. Nyabena his counsel, the Claimant stated that the Nyati loan was secured by insurance which was paid for each month. The loan was thus covered if one could not pay. He stated the loan document did not have space for deductions. The issue of leave was addressed and he testified that when going on leave, the Claimant would get a leave application and fill and he did not retain a copy.
8. The Respondent through its advocates Ms. Michi Kirimi called 2 witnesses. The first was John Githinji Waithaka who was the colleague at work with the Claimant on the material day. He testified that he is a crew commander and is in charge of a Group in Cash-In-Transit. He stated that one never knew who would be in their team. He did recall 14th September 2010 and they were on assignment with the Claimant with whom he had worked with before in Cash-In-Transit. He testified that when they went to the company to pick cash, the cash was poured in a table and the customer, Ondieki (Claimant) and the witness arranged the cash into various denominations and then started counting. The sum the client expected was short by Ksh.7,000/=. The customer had a printout which they used to tally the sums. The money was recounted twice and it was confirmed Ksh. 7,000/= was missing. As they were about to leave, the client notified the witness that he suspected the Claimant and the witness called Mr. Ondieki back and stated that in order to remove all doubt from the customer's mind there was any wrong-doing they both remove all the cash in their pockets.
9. The witness had 80/= and placed it on the table and the Claimant stated he only had what he held. He was asked to place it on the table and after momentary hesitation place exactly 7,100/= on the table. The witness testified that he asked the Claimant to return the money so that the issue could be resolved and the Claimant insisted it was his money. The witness called his managers who took over the issue and stated he did not follow up the matter. He stated he recorded a statement on the matter and the Claimant was dismissed. He stated when one is terminated the Sacco deducts the money from the dues. The insurance in the matter was for the unforeseen demise of a borrower.
10. In cross-examination the witness testified the Claimant stated the money on the table and had not stated how much. There were 3 people – the client, the Claimant and the witness, each of them sat and arranged the cash in bundles before counting. He did not recall the total cash they counted but stated there was a shortage of 7,000/=. There was a print out. He admitted there was nothing to show the 80/= the witness had was not from Petro. He stated there is an instruction not to carry cash when on assignment and that the 80/= he had was at his own risk. The witness testified that the Claimant said the 7,100/= was his and that what made it seem not to be his money was because there was a shortfall of 7,100 and the Claimant had 7,100 and that showed there was a possibility 7,000/= was not his. He confirmed the Claimant was not charged with theft. He testified he left the Claimant there as he insisted the money was his money.
11. The second witness was Kefa Gaitho Kaguru the Cash Service Manager G4S. He testified that the Claimant was not declared redundant but dismissed. He stated leave is not carried forward and is taken when due. The request is done electronically and approval once given is communicated to HR. He stated transfer fees are payable when staff are transferred to another station.

12. In cross-examination the witness testified that at the time of the incident he was the manager of the Claimant. He stated a panel that sat on 16th after the incident on 14th and there was someone from HR, Operations and an independent person. The panel made substantial grounds and it was decided to terminate the Claimant's services. There was a company official who went to Petro Oil and met the whole team there.
13. In re-examination the official confirmed the leave days were 20 for the year 2010 pending. After his testimony the Respondent closed its case and parties agreed on a schedule to file the submissions. The Respondent and Claimant did file submissions which I have considered in coming to the decision.
14. The Claimant submitted that his employment was not in dispute. He worked and the termination was on 16th September 2010 and it was his submission that the dismissal for the alleged involvement in loss of the 7,000/= from the Respondent's client – Petro Oil. The Claimant asserted the dismissal was without regard to Section 42(1) of the Employment Act. The Claimant also submitted he was not subjected to a fair disciplinary hearing before he was dismissed. The Claimant asserted he was not given a show cause letter before his dismissal. The Claimant thus asserted the dismissal was unlawful and thus sought compensation and payment of the terminal dues as per the claim. The Claimant sought certificate of service as well and the Claimant denied owing the Respondent any money.
15. On the part of the Respondent, the submissions were that the Claimant was summarily dismissed for valid reasons. It was also asserted that all the procedures for termination were followed and the Claimant awarded all his terminal dues. The Respondent submitted the Claimant did not prove the case. The fact that the Claimant had to pay back the cash found to be missing was stated to be indicative of involvement of the Claimant in the loss of Ksh. 7,000/=. The submissions also stated that the Claimant confirmed in his testimony that he was heard and that representation were made by him and on his own behalf by the shopsteward who was also present. It was subsequent to this hearing that he was dismissed.
16. The case hinges on the procedural fairness of the termination of the Claimant. It is clear from the evidence that what precipitated the dismissal was an incident that took place on 14th September 2010 at the Petro Oil premises along Jogoo Road where a sum of 7,000/= was found missing from the cash the G4S crew were collecting. It is very interesting and somewhat eerie that a sum of 7,000/= was found in possession of the Claimant. The Claimant insisted it was his money but curiously agreed to part with 5,000/= of that money to resolve the matter. After the crew commander who was DW1 Mr. Githinji called his managers, the matter progressed with the Claimant being asked to give an explanation. This he did in presence of the shopstewards at the Respondent's offices. The letter the Claimant produced dated 16th September 2010 being the dismissal letter narrated that the Claimant was heard and his defence presented against the charges. The Disciplinary Committee found the Claimant culpable in the loss of 7,000/= from Petro Oil and opted to separate with Claimant.

The letter thus gave reasons for the dismissal and it accords with the evidence of the Claimant and Respondent's witnesses that the Claimant was heard and the shopsteward ably represented him before the termination.

17. The Claimant's dismissal was for just cause in terms of section 44 of the Employment Act and he was therefore not unlawfully nor unfairly dismissed. The claims on unlawful dismissal do not lie. The Claimant is entitled only to the terminal dues tabulated by the Respondent being Ksh. 12,125/=. He is entitled to certificate of service which is his right under section 51 of the Employment Act. As the dues were settled by the Claimant the suit is devoid of merit and the claims unproved. It is dismissed with costs.

It is so ordered.

Dated and Delivered at Nairobi this 6th day of December 2013

NZIOKI WA MAKAU

JUDGE