



REPUBLIC OF KENYA
THE JUDICIARY
IN THE INDUSTRIAL COURT OF KENYA
CAUSE NO. 400 OF 2012

TAILORS & TEXTILE WORKERS UNION.....CLAIMANT

VERSUS

M/S SPIN KNIT LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant herein filed a claim against the Respondent seeking determination of the issue framed as unlawful dismissal of Mr. David Macharia. In the Memorandum of Claim is filed 13th March 2012, the Claimant averred that its member one David Macharia, an employee of the Respondent was summarily dismissed on 23rd October 2003 for attempting to take away 13kg of scrap brass. He was earning at the time of dismissal Ksh. 12,213 as basic pay and Ksh. 1,900 as house allowance.
2. The matter was referred to the Conciliator by the Minister for Labour to whom the dispute was reported and after failing to resolve the issue the case was referred to the Industrial Court via the certificate of disagreement. The Claimant's member David Macharia did not testify and parties instead adopted procedure under Rule 21 of the Industrial Court (Procedure) Rules 2010.
3. The Respondent had opposed the suit and averred that there was cause to summarily dismiss Mr. David Macharia for attempted theft. The Respondent denied the Claimant's member was employed in 1991. Instead it alleged the employee was employed in 1995. The sought dismissal of the suit on account of the perceived theft which was stated to be grounds for dismissal.
4. At the time of dismissal, the employee David Macharia was accused of the attempt to steal brass scraps from the Respondent. He had purchased some brass scraps but as he left the parcel he had was weighed and an extra 13 kgs in the load he carried which was supposed to weigh 32 kgs.
5. Mr. Macharia paid for the extra 13 kgs but was not allowed to carry the items out and on his return was dismissed. He thus approached Court.
6. He was allegedly paid dues which were marked full and final settlement and he accepted the payment. While it is clear the employee was employed on 18th April 1991, the employer sought to create the impression the employee was hired in 1995. Indeed, the document containing the date of 1995 is not a letter of employment but a leave application form.

7. The submissions by the Claimant alleged criminal offence by the Respondent in altering the documents but it seems this is not true. What Respondent did was to attach leave forms and allude to the year of employment as 1995. That is far from true. While the Court will not impose sanctions on the Respondent, they are warned not to attempt to hoodwink the Court. The fact of the matter is that as employers they have a duty to maintain records of employees in terms of Section 74 of the Employment.
8. The Claimant's member who is not an angel attempted to cart away goods which were the property of the employer. That was definitely not acceptable and was grounds for dismissal.
9. Having said that, the dismissal did not mean the employee was not entitled to his dues. The dues he was entitled to are the following:
 - a. Service gratuity for 17 years at the rate of 15 days for each completed year

Ksh. 103,810.50/=
 - b. Wages of days worked - Ksh. 9,361/=
 - c. Costs of the suit
10. He is not entitled to notice pay, 12 months compensation or salary increment. He was issued with a Certificate of Service and thus is only to receive the payments in paragraph 9 above.
11. As the Respondent uttered false documents, the Court is minded to report the issue for further action. However, I will temper the matter with mercy and instead issue a warning to the Respondent not to attempt lying to Court or making documents to suit a case.
12. The claim succeeds to the extent set on paragraph 9 above.

It is ordered.

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

Nzioki wa Makau

JUDGE