



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 1426 of 2010

SIMON NGUGI RUNANA.....CLAIMANT

VERSUS

METAL CROWN LIMITED.....RESPONDENT

JUDGEMENT

This is a claim for wrongful dismissal of Simon Ngugi Runana by the respondent Metal Crown limited that in a claim undated. That on the 15th of August 2006, the claimant was employed by the respondent as a motor vehicle mechanic, but offered his services to the respondent from 31st November 1995 to 14th September 2010 when he was wrongfully dismissed from his employment.

The claim is for compensation for wrongful dismissal of employment, certificate of service, any relief that the court may grant and costs of the suit.

The claim is opposed vide respondent statement in reply to the memorandum of claim. It is admitted that indeed the claimant was employed by the respondent as submitted in court and that his employment was summarily dismissed for persistently reporting to work while drunk and intoxicated despite various warnings by the respondent, which actions endangered his wellbeing while at his place of work and that of others with him. That the respondent worked within the law in dismissing the claimant. Further that all claimants' dues were paid being:

1. Salary for September 2010
2. Outstanding leave days
3. Sixty five days pay in lieu of notice and
4. Severance pay as 21 days pay for every year worked.
5. That a certificate of service was issued to the claimant.

Respondent thus prays to court to dismiss the claim in its entirety.

The matter came for hearing on the 12th of October 2011 where the claimant proceeded in persons and Mr. Nyabera appeared for the respondent. In evidence the claimant submitted that he was employed on 31st November 1995 as a mechanic with duties to make repairs to machines. His salary was Kshs.15, 900 per month, house allowance off Kshs.5, 200. He was terminated on 14th September 2010 after being accused of drunkenness at his place of work. That he reported at work at 5.30 pm and terminated at about

8.30 pm by the personnel and general managers. He asserted that he was not drunk and that is why he was able to work from 5.30 pm until the hour he was terminated since he was not taken to verify his drunkenness. That it was dangerous to be kicked out of the factory at night and the letter of termination was issued on 18th September 2010.

In cross-examination, the claimant indicated that he had worked for 15 years with the respondent, they had not prior problems and that he suspected that someone wanted to take his job. That he was not drunk but he accepted the terms of the termination and the computation of his dues and signed the discharge letter accepting KShs.227, 831.00. What he disputes is the manner of termination and the certificate of service was issued.

It was the evidence of the respondent through Mr. Stephen Mureithi Njeru that as human Resource Manager of the respondent he was the one who terminated the claimant vide the letter dated 18th September 2010. That the respondent would run two shifts and claimants was repairing their machines on the material date of termination. That at around 7 pm the Plant Manger called him together with General Manager when it was noted that the claimant was drunk at work. They all proceeded to see him in the presence of a Union representative called George. From their observations and smell they established that he was drunk but upon examination he said that he had eaten garlic. He later said he could not operate the machine he had been allocated to work on due to his intoxication.

It was this witness evidence that due to the fact that the claimant had served them for many years and he was unionised they decided to dismiss him and be paid his terminal due including service which he agreed to and was discharged in the presence of a union representative.

Court Notes that the parties herein were expected to file their written submissions but only the claimant complied vide their letters filed in court on 23rd June 2011.

Court notes the documents filed in this matter, the evidence adduced in court and the written submissions of the claimant. That based on the claim what is in contention is wrongful termination since the claimant has already acknowledged receipt of his certificate of service and all his terminal dues from the respondent.

For this summary dismissal the ground used was that the claimant was drunk at his place of work which was observed by his Manager and witnessed by a union representative. It was the evidence of the respondent witness that when the claimant reported to work they observed that he could not operate his machine due to his intoxication. The claimant did not call any independent witness or the union representative to negate the evidence of the respondent having been informed of the grounds upon which he was summarily terminated.

Court notes that it is now settled law that under the provisions of the Employment Act Section 44:

Summary dismissal shall take place when an employer terminates the employment of an employee without notice or with less notice than to which the employee is entitled by any statutory provision or contractual term

...
...

The following matters may amount to gross misconduct so as to justify the summary dismissal of an employee for lawful cause, but the enumeration of such matters or the decision of an employer to dismiss an employee summarily ... shall not preclude an employer or employee from respectively alleging or disputing whether the facts giving rise to the same, or whether any other matters not mentioned in this section, constitute justifiable or lawful grounds for the dismissal if:-

(a)...

(b) During working hours, by becoming or being intoxicated, an employee renders himself unwilling or incapable to perform his work properly

Court notes that indeed the terminal dues the respondent made to the claimant were generous in the circumstances of this case. For the above reasons and based on the evidence in submission before this court, the Court finds that the claim for wrongful termination and the prayers particularised by the claimant must fail and therefore dismiss this case.

Each party to bear their own costs.

Dated and delivered at Nairobi this 12th day of October 2012

M. W. Mbaru

JUDGE

INDUSTRIAL COURT OF KENYA

In the presence of:

Court clerk.....

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