



REPUBLIC OF KENYA

Industrial Court of Kenya

Civil Suit 600 of 2012

BERNARD MUTUNGA DAVID.....CLAIMANT

VERSUS

KINGS KITCHEN KENYA LIMITED.....RESPONDENT

JUDGEMENT

This is a claim dated 28th March 2012 claiming that Bernard Mutunga David suffered wrongful, unfair and unlawful summary dismissal and failure by the respondent Kings Kitchen Limited to pay his terminal dues. The respondent has filed a defence dated 7th May 2012 denying the wrongful, unfair termination and that the terminal dues of the claimant were filed with the Minister for Labour.

This case came for hearing on 27th August 2012 for hearing but the Court was on Vacation. Court notes that on this date only the claimant appeared despite the respondent being served on 22nd August 2012 and affidavit of service being filed by Charles Mutua Mwanzi. That this matter was further fixed for hearing on 22nd October 2012 but the respondent did not make an appearance. A return of serve was duly filed indicating service of Hearing notice by Charles Mutua Mwanzi.

It is in evidence that the claimant was employed by the respondent in October 2007 as a security guard on a monthly salary of Kshs.11, 129.00. That in November 2011 the respondent terminated the employment of the claimant unlawfully and unfairly without copayment of his dues. That the claimant reported to his Union and to the Minister for Labour where two meetings were convened where an agreement was reached that he be paid overtime for 8 months.

In the defence, the respondent admits that the claimant was their employee and that upon termination he was paid his dues which were finalised with the Minister for Labour where he was paid Kshs.36, 000.00 which was received and acknowledged by the claimant. That a further payment of Kshs.80, 318.00 were made to the claimant for a final payment of other outstanding dues. That the claimant absconded from duty and the respondent had to outsource work to cover the deficit.

In his sworn evidence the claimant stated in Court that he worked 4.30pm to 7.30 am every day of the week and on Saturdays he would start at 12.30 pm until Monday 7.30 am. That when he asked for his overtime pay, the respondent manager would advise that his claim would be addressed in due course which was never done until he asked his Union to intervene. That through the Union negotiation, some money for overtime was agreed. That the claimant was not satisfied with this negotiation since he was not invited to the negotiation table. That he decided to go to the Legal Aid Centre to follow up on his dues as he wished them to be calculated since the Union negotiated for less hours of 2 hours per day for 2 years.

It was in evidence that on 1st November 2011, the claimant was terminated without notice or being given

reasons for the same. That when he reported to work, the police were called to evict him from the premises but he complied and no force was needed.

Court notes that where an employee is unionised, he enjoys the benefit of representation and even where he is absent the union representative works in his or her best interests. The fact that the claimant was not on the negotiation table when his overtime dues were being calculated is not an enough good reasons to refuse to accept the outcome of such meetings and or negotiations. Section 23 of the Labour Institutions Act gives capacity to a union representative to act for and on behalf of their member.

Looking at the Objectives of the Employment Act, the Labour Relations Court and the jurisdiction of the Industrial Court, this Courts objectives are to facilitate the good industrial relation in the social contract that indeed before coming to this Court, parties are encouraged to explore negotiations with their employees and employer with the assistance of the Union, the Labour Officers and the Minister for Labour.

From the documents attached to the defence which the claimant does not dispute, he received and acknowledged the sum of kshs.36, 000.00 on 19th September 2011 for overtime earned and negotiated on his behalf by his Union. He was further paid Kshs.9, 000.00 for his rests days. Further he was paid Kshs.35, 000.00 vide cheque number 003795 dated 20th November 2011. He does not indicate what this last sum of money was for. All this amounts to Kshs.70, 000.00.

The claim for unfair termination was not supported by any evidence.

Claimant appeared before this Court and I observed that he was not truthful and the Court had to push him to share his evidence and tell Court what exactly transpired. Even though the respondent was not in Court to cross-examine him, he ought to have done justice to his own claim by giving Court the necessary details to enable Court arrive at a just decision.

Court finds that this claim has already been satisfied in full, the Labour Officer was informed with the involvement of the claimant Union as well as the minister for Labour. If any dues as paid have not been collected as outlined above, the claimant should get his cheques Number 003795 dated 20th November 2011 from the Labour Officer.

Claim is dismissed.

No order to costs.

Dated and delivered at Nairobi this 2nd day of November 2012

M. W. Mbaru
JUDGE

INDUSTRIAL COURT OF KENYA

In the presence of:

Court clerk.....

.....
.....