



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 105 of 2010

KENYA SHOE AND LEATHER WORKERS UNIONCLAIMANT

VERSUS

VYATU LIMITED.....RESPONDENT

ISSUE IN DISPUTE: Dismissal of Ibrahim Kadir

AWARD

This case was filed by the claimant **KENYA SHOE AND LEATHER WORKERS UNION** by a Memorandum of Claim filed in Court on 10th February 2010. The case was mentioned for directions on 9th March, 2010 and fixed for hearing on 25th May 2010. The parties were heard by Hon. Justice Charles Chemuttut on 25th May 2010 when Mr. Bolo appeared for the Claimant union and Mr. Menezes for the Respondent.

Following the retirement of Hon. Justice Chemuttut, the file was allocated to me to write the award. The parties were invited for mention to take directions in respect of the award on 2nd October 2012 when Mr. Maina appeared for the claimant but there was no appearance for the Respondent. Mr. Maina stated he had no objection to my writing the award.

In the Memorandum of Claim, the Claimant prays for the following orders:-

- (i) Mr. Kadir, in our submission, was unfairly dismissed and should be reinstated back to his work and be paid for the period he has been out of employment.**
- (ii) Be paid house allowance for the period he has been out of employment.**
- (iii) Days worked.**
- (iv) 2 months notice as per the CBA.**
- (v) Leave/travelling allowance.**
- (vi) 20 days pay for each completed year of service as per the CBA.**
- (vii) Be paid 12 months compensation for the difficulties he has undergone as provided for in the**

Labour Institutions Act 15 (a), (b) and (c).

The Respondent filed its reply through L.G. Menezes Advocates on 8th March 2010. In the reply the respondent states that the claimant was dismissed for being intoxicated while at work and refusing to attend hospital for a blood test.

On the hearing date **MR. JOSEPH BOLO** appeared for the claimant while **MR. MENEZES** appeared for the Respondent. Proceedings were by oral submissions.

Mr. Bolo submitted that the claimant was employed on 1st May 1996 as a regular employee. Before that date he had been in the Respondent's employment as a casual employee. He was a Machine Operator. His basic salary was Shs.5,556/=. He was dismissed on 1st February 2007. The reason for dismissal was being intoxicated on 24th January 2007. Mr. Bolo submitted that there was no proof that the employee was drunk. He further submitted that the grievant had a clean record. He submitted the action taken against the grievant violated Section 41 (1), 2 (a) and (b) of the Employment Act 2007. He prays for payment of the following:-

(i)	2 months Salary in lieu of notice	-	Shs.13,732.00
(ii)	Annual leave of 25 days	-	Shs,5,566.00
(iii)	Severance Pay for 10 years	-	Shs.44,528.00
(iv)	Leave travelling allowance	-	Shs.1,400.00
(v)	12 months compensation	-	<u>Shs.66,792.00</u>

Total:- Shs.112,770.00

For the respondent it is submitted that the grievant had a bad record and was in fact serving notice of termination at the time of his dismissal. The grievant had several warnings that were valid at the time of dismissal. On the material day the 24th January 2007 the claimant reported to work drunk and had arguments with his supervisors over his work. The supervisor noticed that he smelt alcohol and alerted the Manager, who asked the Grievant to go to hospital for his alcohol level to be checked but he refused. He admitted that he had been drinking until 10.00 a.m. in the morning but slept until 5 p.m. when he came to report to work. This was admitted in his statement dated 29th January 2007. He also apologized for being drunk and disrespectful to his supervisors in his letter dated 31st January 2007.

The issue for determination is whether the dismissal of the Grievant by the Respondent was fair and if so, if the Grievant is entitled to the reliefs sought by the claimant on his behalf.

Upon reading the pleadings and oral submissions of the parties as recorded in the file, I find that the Respondent had valid reason to dismiss the Grievant. The grievant was already serving a termination notice at the time of dismissal which was issued to him on 8th January 2007 and is acknowledged and signed by him. He also had several valid warnings in his file, the last one dated 31st May 2006. All the warnings related to misconduct. The incident that led to his summary dismissal related to reporting to work drunk and refusing to go for a blood alcohol level test and being disrespectful to his supervisors. He admitted these accusations in his statement dated 29th January 2007 and appended by the Respondent as Appendix "R3". The parties Collective Agreement for the period 1st November 2005 to 31st October 2007 provided at clause 12 (c) that the employer reserves the right to dismiss an employee instantly for gross misconduct as defined in the Employment Act, Cap 226 (now repealed). The Employment Act 2007 was not in force at the time the Grievant was dismissed from employment and therefore does not apply to this case.

For the foregoing reasons I sustain the decision of the Respondent to dismiss the grievant. The next issue is whether the Grievant is entitled to any terminal benefits. The Respondent has not made any submissions in respect of the terminal benefits payable to the Grievant. The Claimant has prayed for the following:-

1. **Reinstatement**

Having found that the dismissal was valid, this claim is rejected.

2. **House allowance for the period he has been out of employment**

No evidence or submissions were made in respect of this item. It has therefore not been proved and is rejected.

3. **Days worked**

The claimant did not specify which days the Grievant had worked but was not paid. In the tabulation of benefits filed in Court on 25th May 2010

no reference is made to the days worked and not paid for. I therefore find that this prayer has not been proved and reject the same.

4. **2 months notice**

Having found that the dismissal of the Grievant was justifiable, he is not entitled to notice or payment in lieu.

5. **Leave travelling allowance**

No evidence was submitted in respect of this prayer. I therefore find that it has not been proved and dismiss it.

6. **20 days pay for each completed year of service**

The Collective Bargaining Agreement does not specify that an employee dismissed shall not be entitled to gratuity. Clause (9) merely provides for qualifying period and provides for payment of service gratuity when an employee is terminated or retired. I shall give the employee the benefit of doubt taking into account the fact that the grievant was already serving a termination notice at the time he was dismissed from employment. Having worked for 10 years, he is entitled to payment of service gratuity at the rate of 20 days pay for each year worked as provided in the CBA. This amounts to (5,566x20/30) Kshs.37,107/=.

I therefore award Kshs.37,107 to the Claimant. This should be paid to the claimant within 30 days from the date of this award.

Orders accordingly

DATED AND DELIVERED ON THIS 1ST DAY OF NOVEMBER 2012

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

For Claimant _____

For Respondent _____