



REPUBLIC OF KENYA

EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO.99 OF 2015

(Before D. K. N. Marete)

BENJAMIN KIPCHIRCHIR LAGAT.....CLAIMANT

VERSUS

EMROK TEA FACTORY (EPZ) LIMITED.....RESPONDENT

JUDGEMENT

This matter is originated by way of a Memorandum of Claim dated 19th June, 2014. It does not disclose a cause of action on its face.

The respondent vide a Respondent's Response to Claim dated 14th July, 2014 denies the claim and prays that the same be dismissed with costs to herself.

The claimant's case is that at all material times to this cause, he was an employee of the respondent. He worked from 2008 to 26th June, 2016 when his services were terminated by the respondent with a refusal to pay his terminal dues. This she avers, was without compliance with the Employment Act and was unlawful for the following reasons;

- a. *The claimant trade union was not informed of the intention to declare the claimant redundant.*
- b. *No leave pay was given.*
- c. *No 1 forty five days salary in lieu of notice was paid.*
- d. *The required severance pay was not paid.*

The claimant further avers and submits that during his stint of employment, she was grossly underpaid in regard to the Regulation of Wages (General) (Amendment) order in force, worked overtime, rest days and public holidays without pay.

He claims as follows;

- a. *1 forty five days pay in lieu of Notice*

Basic + house allowance

11,400 + 5,700 Kshs. 17,100

b. *Compensation of unfair termination*

Gross pay x 12 months

11,400 x 12 months Kshs. 136,800

c. *Service gratuity*

23 days x years worked x basic/26 days

23 x 4 x 11,400/26 Kshs. 40,338.46

d. *House allowance*

15 of basic x 12 months x years worked

15 of 11,400 x 12 x 4 years Kshs. 82,080

TOTAL CLAIM **Kshs.276,318.46**

In the penultimate, he prays as follows;

- a. *A declaration that the termination process as carried out by the respondent is unlawful and that during his employment with the respondent, he was not remunerated as required by law.*
- b. *Payment of the sums of money claimed under paragraph 9 above.*
- c. *Costs and Interests.*
- d. *Any other relieve the Honourable court may deem fit.*

The respondent in defence takes on a whirlwind. Her case is from the onset an outright denial of a relationship of employment with the claimant and thereafter a denial of termination or even that the claim is supported by the Employment Act, Cap 226. She in the alternative pleads dismissal of the claim on grounds of gross misconduct. This is as follows;

4. *The Respondent avers that this claim does not fall or is not supported by law and more particularly that the Employment Act Cap 226 does not sustain this claim and the said Act/Law is totally irrelevant to these proceedings.*

5. *Further, the respondent denies the particulars of unlawful acts stated by the claimant at paragraph 6 (a), (b), (c) and (d) and puts the Claimant to strict proof.*

6. *Further, and without prejudice to the foregoing, the Respondent avers that if the Claimant was an employee of the respondent (which is denied) the respondent states that the Plaintiff was summarily dismissed from employment in accordance with the law and more particularly in accordance with Collective Bargaining Agreement dated 12th April, 2014 signed between the claimant's union to which the claimant was a member for having committed acts of gross misconduct and the particulars thereof are as*

follows

- 1. Committing an Act of fraud by doctoring the weighing machine.**
- 2. Confessing by letter dated 1st July 2013 that he committed fraud or stealing farmers' Tea leaves from buying Centers.**
- 3. Stealing from the company**
- 4. Being dishonest**

The issues for determination therefore are;

1. Was the termination of the employment of the claimant wrongful, unfair and unlawful"
2. Is the claimant entitled to the relief sought"
3. Who bears the costs of this cause"

The parties chose not to file their written submissions despite an allowance and award of time to do this on 5th May, 2016. However, the respondent in his witness statements by, one, Kenneth Cheruiyot – the General Manager of the respondent brings out the following evidence in defence in a witness statement dated 11th March, 2016;

On 4th June, 2014 the company received a written complaint from one of its farmers Mr. John Rutto Grower No. 4343 concerning theft of his tea by his workers and the leaf weighed by an Emrok Tea Factory (EPZ) Limited clerk to another farmer and this was reported to the police under OB NO 14/10/06/2014 at Lessos Police Station.

The Company took the step to investigate all Green leaf weighments done by her clerks with intention to pick out any inconsistency in weighment which would be an indicator of fraud.

When past weighments of Benjamin Lagat were examined it was discovered that in the Month of May, 2013 he had made various suspicious weighments.

Benjamin Lagat the claimant herein was summoned to the office on 6th

June, 2013 and asked to explain the discrepancies and in his written statement denied committing any fraud. Present were the out growers Manager and Security Officer.

On 7th June, 2013, Benjamin Lagat was accorded another opportunity to defend himself and admitted in writing that he engaged in the business of purchasing Greenleaf and weighing the same to his wife's green leaf account through her out grower Account No. 463 in the name of Joyce Lagat.

Due to his conflicting statements Benjamin Lagat was served with suspension from on 10th June, 2012 for a period of 2 weeks.

Following extensive investigations it was established that Benjamin Lagat had indeed engaged in fraud. He was subsequently summarily dismissed on 26th June, 2013 from the company employment on grounds of gross-misconduct and guided by the CBA and Employment Act 2007.

Subsequently to the dismissal, Benjamin Lagat wrote a letter of apology dated 1st July, 2013 admitting to engaging in Greenleaf fraud against farmers and the company. He admitted in writing that about 400 Kgs weighed by himself into his wife's Greenleaf account were fraudulent and therefore invalid.

This is evidence of investigations of fraud by the claimant in the misappropriation of weighed tea leaf in the cause of his duties which he admits in his letter of 1st July, 2013. The respondent also annexes the claimant's letters of 6th and 7th June, 2013 as evidence of the investigations and where the claimant admits involvement in other malpractices at his place of work. I therefore find a case of lawful termination of the employment of the claimant on grounds of gross misconduct and hold as such.

With a finding of lawful termination, I am inclined to dismiss the claim with an order that each party bears their own costs of this cause.

Delivered, dated and signed this 30th day of June 2016.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Rugut instructed by Chepkwony & Company Advocates for the Claimant.
2. Mr. Sang instructed by S.K.Kitur & Company Advocates for the Respondent.



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