



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 2193 OF 2016

BETWEEN

BENJAMIN KAMANDA NJATAYA.....CLAIMANT

VERSUS

SPHINX PHARMACEUTICALS LIMITED.....RESPONDENT

Rika J

Court Assistant: Emmanuel Kiprono

Kiyondi Nyachae Advocates for the Claimant Kamau

Mwangi & Company Advocates for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 27th October 2016. He states that at all material times, he was an Employee of the Respondent.
2. He was summarily dismissed by the Respondent on 9th September 2015, on the allegation of stealing and selling a drug known as pseudoephedrine.
3. Respondent's Director asked the Claimant on 10th September 2015, to surrender all Respondent's property in his possession, alleging that the Claimant was a thief. The Claimant was told to go home, think about it, and return the following day ready with the truth.
4. He went back on 14th September 2015, and was advised by the Guards at the gate, that the Respondent had given instructions, that the Claimant should not be allowed in.
5. The Claimant reported the dispute to the Ministry of Labour and Social Services. The Respondent was summoned for conciliation, to no avail.

6. The Claimant states that, he was denied procedural and substantive justice under Sections 41, 43 and 45 of the Employment Act.

7. He prays for Judgment against the Respondent for: -

- a. Declaration that summary dismissal was illegal and un-procedural.
- b. 1-month salary in lieu of notice at Kshs. 18,150.
- c. Days worked in September 2015 at Kshs. 4,840.
- d. 12 months' salary in compensation for unfair termination at Kshs. 217,800.
- e. Severance pay at Kshs. 145,200.
- f. Leave allowance of 7 months at Kshs. 127,050.

Kshs. 512,940.

g. General damages for unfair termination.

h. Certificate of Service.

i. Costs.

j. Interest.

8. The Respondent was twice served with Summons to Enter Appearance. Other than a Notice of Appointment of Advocates filed by Kamau Mwangi & Company Advocates, the Respondent filed nothing else. Hearing proceeded *ex parte*, on 14th October 2021.

9. The Claimant told the Court he is presently a General Worker, and resident of Mukuru kwa Njenga. He adopted his Witness Statement and Documents on record. He asked the Court to uphold the Claim.

10. The issues in dispute are whether the Claimant's contract of employment was terminated fairly in accordance with Sections 41, 43 and 45 of the Employment Act; and whether he merits the remedies pleaded.

The Court Finds: -

11. According to the Claimant's Witness Statement on record, he was employed in 2006 by the Respondent as a General Worker. He was promoted to raw materials store, dispensing and tableting departments after 2 years. In 2011 he was promoted to dispensing department. He was still working there until the Respondent summarily dismissed him, for alleged theft of pseudoephedrine. His last salary was Kshs. 18,150 monthly. He was asked to go home and report back later, ready with the truth. The Claimant left on 10th September 2015 and returned on 14th September 2015 only to be locked out.

12. There is no record of a hearing. There was no letter to show cause why disciplinary action should not issue. There were no charges of an employment offence, drawn and presented to the Claimant. It was a shadowy termination, effectuated by way of a lock-out, based on shadowy theft of a drug named pseudoephedrine.

13. He had worked for 9 years. His record was untainted. He had been promoted severally on merit. He was paid nothing on termination. He expected to go on working. His contract was term-indeterminate. He did not contribute to the circumstances leading to termination. The Respondent, having been served with the Summons twice, has filed nothing, to dispute any aspect of the Claim.

14. *It is declared that termination was unfair under Sections 41, 43 and 45 of the Employment Act.*
15. *The prayer for compensation for unfair termination is allowed at equivalent of 12 months' salary at Kshs. 217,800.*
16. *Notice pay is granted at Kshs. 18,150.*
17. *The prayer for salary for 9 days worked in September 2015, is allowed at Kshs. 6,282.*
18. There is no evidence that the Claimant was entitled to leave traveling allowance, which is claimed at Kshs. 127,050. There is no support for severance pay. Termination was not via redundancy. Statutory compensation has been awarded for unfair termination. There is no justification in the prayer for general damages for unlawful dismissal. There was only a single act of termination.
19. *Certificate of Service to issue.*
20. *Costs to the Claimant.*
21. *Interest allowed at court rates from the date of Judgment, till payment is made in full.*

IN SUM, IT IS ORDERED: -

- a. *Termination was unfair.*
- b. *The Respondent shall pay to the Claimant: equivalent of 12 months' salary in compensation for unfair termination at Kshs. 217,800; notice at Kshs. 18,150; and 9 days' salary for work done in September 2015 at Kshs. 6,282 – total Kshs. 242,232.*
- c. *Certificate of Service to issue.*
- d. *Costs to the Claimant.*
- e. *Interest allowed at court rates, from the date of Judgment till payment in full.*

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 24TH DAY OF FEBRUARY 2022.

James Rika

Judge



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