



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 109 OF 2015

AGGREY LUKORITO WASIKE..... CLAIMANT

VERSUS

KENYA POWER AND LIGHTING COMPANY LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 13th May, 2016)

JUDGMENT

The claimant filed on 09.10.2015 the memorandum of claim through Gori, Ombongi & Company Advocates. The claimant prayed for an award as follows:

- a. Compensation for wrongful dismissal to a maximum of 12 months wages and general damages emoluments or contingencies at a rate of 15% of the total amounting to Kshs. 491, 820.00.
- b. Damages for lost earnings for the month of November 2013 upto the date of determination of the suit being monthly earnings of Kshs. 40, 985.00 and annual increment of 8% of the salary per annum up to the date of reinstatement.
- c. Costs of the suit.
- d. Interest on a, b, and d above till payment in full.

The memorandum of response was filed on 09.10.2015 through Sing'Oei Murkomen & Sigei Advocates.

The claimant was employed by the respondent and at material time he was assigned to issue cables to customers. It was alleged that in the process of performing his duties the claimant did not document 300mm copper cables which had been issued to a customer known as Dakika Company Contractor. The claimant in that connection was prosecuted for the offence of stealing contrary to section 275 of the Penal Code but the prosecution was not successful.

There is no dispute that the claimant was given a notice and a hearing as envisaged in section 41 of the Employment Act, 2007. The issue in dispute is whether on the basis of the material at the disciplinary hearing and then before the court, the respondent had a valid reason to terminate the employment by dismissing the claimant. The allegation was that the claimant stole copper cables by liaising with Dakika Contractors at the respondent's Kingongo stores. The evidence shows that the claimant issued 1,100 metres of copper wire to the contractor and it was all recorded. The alleged 300 metres was part of the 1,100 metres recorded by the claimant. RW1 testified that he had no records which showed that 300 metres of copper cables had been stolen or were missing at the store. RW1 was not at the scene but confirmed that all the documents relating the cables had been signed. RW1 stated that he had no

inventory to show that any of the received cooper cables as reconciled with those issued by the claimant would show that some cables were missing. He confirmed that the claimant had not been replaced and his position was still vacant. RW1 in cross examination reconfirmed that there was no written record to show that the discrepancy of 300 meters of cooper cables. RW1 stated that he had no record to establish the discrepancy.

The court has considered the evidence and returns that there was no valid or genuine reason for the dismissal of the claimant at the time he was dismissed by the respondent. The dismissal was unfair under section 43 of the Employment Act, 2007 for want of a valid reason for the dismissal. That the claimant's prosecution was not successful add to show that the allegations as levelled against the claimant were unfounded as they were not justified.

The court has considered the prayers made for the claimant. It was confirmed that the position held by the claimant was vacant. In this case the claimant has established a good case for reinstatement with full pay from the date of the termination. There is no established bar to such reinstatement and the court returns that the claimant is entitled accordingly.

In conclusion, judgement is hereby entered for the claimant against the respondent for:

- a. The reinstatement of the claimant in the service of the respondent with effect from 22.10.2013 in the position held before the termination without a break in his service with full prevailing benefits and to continue in that service until the due date of retirement or lawful separation; and for that purpose the claimant to report to the respondent's Managing Director for appropriate deployment not later than 18.05.2016 at 9.00am.
- b. Consequential to the reinstatement the respondent to pay the claimant all withheld monthly salaries and allowances from 22.10.2013 and the claimant to compute and serve the respondent the same within 7 days from today with a view of recording the same in court on a date convenient to the parties.
- c. The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at Nyeri this Friday, 13th May, 2016.

BYRAM ONGAYA

JUDGE