

IN THE EMPLOYMENT RELATIONS COURT
AT LAUTOKA

ERCC No. 01 of 2019

BETWEEN : MOHAMMED RAIYAZ KHAN

PLAINTIFF

AND : COCA COLA AMATIL (FIJI) LIMITED

DEFENDANT

BEFORE : M. Javed Mansoor, J

COUNSEL : Mr. N. Padarath for the Plaintiff

: Mr. N. Tofinga for the Defendant

Date of Hearing : 29 July 2022

Date of Judgment : 1 December 2023

JUDGMENT

EMPLOYMENT

Summary dismissal – Employment grievance – Jurisdiction of court to hear employment grievance

1. The plaintiff filed action alleging that the defendant summarily dismissed him from employment on 10 February 2016, although there was no serious misconduct on his part. The plaintiff commenced employment as a sales merchandiser and was made the senior business development representative on 1 December 2008. He was required to service and maintain clients in designated areas in Lautoka, Ba and Tavua.
2. The plaintiff stated in his statement of claim that he was investigated by the employer following an allegation that he was having an extra marital affair with a doctor in Ba. He says that his personal affairs are not related to his employment and that his behavior did not amount to serious misconduct. He denied there is any evidence to support the allegation that he visited the doctor in her clinic while visiting clients during working hours. The plaintiff explained that traveling to Ba was part of his employment duties. The plaintiff says that the defendant falsely alleged that he was not trustworthy without carrying out a proper investigation. He alleged that the termination of his employment was unfair and unlawful, and that it caused him humiliation, loss of dignity and injury to feelings. The plaintiff has asked for damages for breach of contract, for unlawful and unfair dismissal.
3. By its statement of defence, the defendant pleaded that the plaintiff was summarily dismissed for gross misconduct and for failing to comply with lawful directions. The defendant says that on several occasions the plaintiff abandoned designated work to engage in an illicit relationship. The defendant says that the plaintiff was granted due process and was lawfully and fairly dismissed with no cause for humiliation, injury to feelings or loss of dignity.
4. The parties raised the following issues:
 - (1) “Whether the plaintiff was required to travel to several towns and cities in Fiji as part of his duties?

- (2) Whether there was any serious misconduct on the part of the plaintiff during his employment with the defendant company justifying summary dismissal?
 - (3) Whether the defendant breached the contract of employment by summarily dismissing the plaintiff?
 - (4) Whether the termination of the plaintiff was unfair and/ or unlawful?
 - (5) Whether the defendant caused the plaintiff humiliation, loss of dignity and injury to feelings?
 - (6) Whether the plaintiff suffered or is entitled to any loss and damage?"
5. In his evidence in chief, the plaintiff said he was having an affair with a medical doctor who was based in Ba. Although the employer complained that he was visiting the doctor's clinic in Ba during working hours, the plaintiff denied doing so during office hours. His working hours were 8 am to 5 pm on weekdays and 8 am to 1 pm on Saturdays. He said he visited her after work. He responded in writing to the defendant's allegations. Another allegation against the plaintiff was that he published comments concerning the doctor in his facebook account. He denied the claim and said that the account did not belong to him. He said he did not have a facebook account until his dismissal. As the account did not belong to him, he reported the matter to police.
6. The plaintiff referred to an incident in which the doctor's husband assaulted one of his colleagues after he was mistaken to be the plaintiff. Following this incident, the plaintiff was summoned to a meeting with his manager on 7 December 2015. The meeting did not take place, but after a telephone conference call, in which it was alleged that he visited the doctor during office hours and sent her messages via facebook, he was suspended from employment. The management told him that his social media posts, which made references to his extra marital affair, could bring the employer into disrepute. He was informed that the matter would be investigated. Subsequently he was dismissed from employment without a proper investigation.

7. A human resources officer, Edward Morgan, gave evidence on behalf of the employer. The witness said that the plaintiff visited the medical clinic on several occasions in company uniform without prior approval for those visits. He said that the plaintiff was invited to a meeting on 16 November 2015 to discuss his conduct, and he was allowed to bring a representative to assist him. By letter dated 9 December 2015, the defendant informed the plaintiff that it would contact him after completing investigations. The letter stated that the plaintiff harassed the couple who are both doctors, and their staff at the medical clinic, and that his facebook messages to the couple “are vile and rude messages that are not expected of someone of your position or of an employee of CCA” (CCA refers to the plaintiff). The plaintiff replied the letter denying the allegations against him. The witness said that if an employee did not follow the company’s code of ethics, disciplinary proceedings would follow.
8. By letter dated 22 January 2016, the defendant stated its findings and said that his conduct was a serious breach of practice and protocol. Since he was issued a final written warning previously, the witness said, the plaintiff was given an opportunity to show cause by 27 January 2016 as to why the defendant should continue employing him.
9. Section 33 of the Employment Relations Act permits an employer to terminate the employment of a worker for gross misconduct. While the defendant appears to have gone through a disciplinary process prior to terminating employment, the plaintiff insists that the process lacked transparency and fairness, and that there was also no evidence of misconduct. The plaintiff says he was humiliated and injury was caused to his dignity and feelings.
10. The plaintiff’s complaint is one of unfair termination, which constitutes an employment grievance as defined in section 4 of the Employment Relations Act.
11. In written submissions, the plaintiff addressed the issue of whether this court has original jurisdiction to adjudicate an employment grievance. The plaintiff submits that the court has original jurisdiction to deal with this case.


12. The definition of employment grievance in the Act includes a dismissal. An employment grievance must, in the first instance, be referred to mediation services. If it is not settled by mediation, the mediator is required by section 194 (5) of the Act to refer the grievance to the Employment Relations Tribunal for its adjudication.
13. Section 211 (1) (a) of the Employment Relations Act confers the tribunal with the jurisdiction to hear an employment grievance. The original jurisdiction of this court is set out in sections 220 (1) (h), (k), (l) and (m) of the Act. The Act does not confer on this court original jurisdiction to hear an employment grievance excepting when it is specifically allowed by the Act. The court will not assume jurisdiction where it is not conferred by law or where jurisdiction can be clearly implied. The scheme of the legislation does not give original jurisdiction to this court to hear an employment grievance except where the statute allows it. This court has no jurisdiction, therefore, to hear the plaintiff's employment grievance.
14. The plaintiff has not pleaded or given evidence of any term of the employment contract which is said to have been violated in order to constitute an action for breach of contract. On this basis also the action cannot succeed.

ORDER

- A. The action is dismissed.
- B. The parties will bear their costs.

Delivered at **Suva** *via skype* on this **1st** day of **December, 2023**.




M. Javed Mansoor
Judge