



REPUBLIC OF KENYA

High Court at Mombasa

Cause 108 of 2012

JOHN NGARI NJERU.....CLAIMANT

VERSUS

HUI COMMERCIAL (EPZ) LIMITED.....RESPONDENT

JUDGMENT

The Claimant has brought this Suit seeking compensation for breach of contract through wrongful and unlawful termination of his employment by Respondent. The respondent never filed any defence or appeared for the hearing despite being served with summons and hearing notice. Consequently, the suit was heard exparte on 22.03.2013 when the claimant testified as CW1.

The summary of his evidence is that he was employed by the Respondent on 27.03.2008 as a Machine Operator at a salary of Kshs.6000/= per month. This was increased to Kshs.17,000/= upon promotion to management office. That he was never given any appointment letter but only an identification card which was produced as exhibit 1. That he worked continuously until 06.09.2010 when he was verbally dismissed summarily without any benefits. That during his entire period of service, he was never given any leave.

He prayed for pay in lieu of leave for two and a half years (Kshs. 63,250), one month salary in lieu of notice (Kshs. 17,000/=), salary arrears for the month of August and September 2010 (Kshs. 18,256/=) under payment by Kshs. 10,000/= from June 2008 to 06.09.2010 (Kshs.297,000/=), 12 months salary for unfair termination of employment and service pay because he was not contributing to NSSF. The Suit before me relates to an employment dispute between employer and an employee. I am therefore satisfied that I have the necessary jurisdiction to entertain the same. The issues for determination are;

1. Whether the dismissal of the claimant from employment by the Respondent was unlawful and therefore unfair.
2. Whether the relief sought ought to be granted.

The answer to the first issue is not denied because the respondent never filed defence. This court therefore believes the uncontroverted evidence and pleaded facts by the claimant. Section 47(5)

puts the burden of justifying termination of employment upon the employer. Section 43 requires that an employer must prove the reason for termination. Section 41 require that the employer must give a fair hearing to the employee before termination. Section 45 then prohibits unfair termination of employment by the employers. Without any evidence from the employer, to justify, this court finds and holds that the verbal dismissal without hearing was unfair termination and unlawful.

The next issue to consider is the relief sought. Section 49 of the Employment Act provides for salary in lieu of notice, payment of salary arrears, cash pay for accrued leave days not taken, 12 months compensation and for unfair termination. Section 35 of the Act provides for service pay at the rate of 15 days per year of service.

I will therefore award the claimant the following using the pleaded salary of Kshs.17,000/= only;

1. One month salary in lieu of notice.....17,000
2. Salary arrears for August and September 2010.....20,400
3. Accrued leave at 21 days per year (21x2.5x17000).....29,750
4. 12 months salary for unfair termination.....204,000
5. Service pay (15x2x17000).....17,000

Kshs.288,150

The claimant will also have costs and interest.

Orders accordingly.

Signed, Dated and Delivered on the 22nd day of April 2013.

Onesmus N. Makau
JUDGE