



The case was heard on 18<sup>th</sup> July 2019 in the absence of the respondent after the court confirmed from the record that the respondent had been invited to fix hearing date by letter dated 18<sup>th</sup> April 2019 which was served upon the respondent's Counsel but there was no appearance for the respondent on 2<sup>nd</sup> May 2019. That the claimant took a date ex parte and served a hearing notice upon Counsel for the respondent as verified by the hearing notice and affidavit of service filed in court on 16<sup>th</sup> July 2019.

At the hearing the claimant testified that he was employed by the respondent as a motor vehicle mechanic in November 2009. That his last salary was Kshs.25,000. That on 19<sup>th</sup> May 2012, he was assigned work by the Workshop Manager, Mr. Umesh but while he was looking for the key to the store, the said Mr Umesh started hurling abuses at him. He was thereafter suspended verbally and asked to write a letter of apology. He testified that he was unable to write a letter of apology as he was not aware of the offence he was apologising for. He instead wrote a statement explaining what happened. The statement was rejected by the respondent and on 26<sup>th</sup> May 2012 he was denied entry into the work place by the security guard on instructions of the respondent.

He thereafter reported to the union who reported a trade dispute.

The Labour Officer invited the respondent for a hearing but the respondent failed to attend the meeting. He thereafter filed the instant suit.

The claimant denied having been issued with a show cause letter or having been called for a disciplinary hearing as alleged in the statement of response.

The claimant testified that he did not take leave during the period he was in employment and was not paid in lieu thereof.

The respondent's case was closed in its absence as it failed to attend court.

In the submissions filed on behalf of the claimant, he submits that his evidence was not controverted by the respondent. The claimant relied on the decisions in **Jared Aimba v Fina Bank Limited, Walter Ogal Aruro v Teachers Service Commission, Kenya Union of Commercial Food and Allied Workers v Meru North Farmers Sacco Limited and Donald Odeke v Fidelity Security Limited.**

In all these decisions the court emphasised that a fair termination must comply with Sections 41, 43 and 45 of the Employment Act.

#### **Determination**

I have considered the pleadings, evidence on record and the submissions filed by the claimant. The issues for determination are whether the termination of the claimant's employment was unfair and if he is entitled to the remedies sought.

The claimant testified that he was dismissed without a hearing and that there was no valid reason for his dismissal. The respondent filed a letter of termination giving reason for the termination as absconding duty. Having failed to attend court for the hearing to present its evidence or test the claimant's evidence through cross examination, I find that the claimant's evidence is unrebutted. On the evidence on record, I find that there was no valid reason for the termination and the claimant was not given a hearing. The termination was thus unfair in terms of Section 45(2) of the Act.

#### **Remedies**

The claimant is entitled to one month's salary which I award him at **Kshs.25,000** being one month's salary in lieu of notice.

The respondent did not controvert the claimant's evidence that he never took leave while in the respondent's employment. Having worked for 30 months, he is entitled to 52.5 days annual leave. I thus award him **Kshs.50,480.80** in lieu of annual leave.

In compensation for unfair termination, taking into account the circumstances under which his employment was terminated, the length of his employment and other factors as set out in Section 49(4) of the Act, I award the claimant 6 months' salary as compensation in the sum of **Kshs.150,000.**

**In total I award the claimant the sum of Kshs.225,480.80.**

The respondent shall pay the claimant's costs for the suit and interest shall accrue at court rates from date of judgment.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 12<sup>TH</sup> DAY OF MAY 2020**

**MAUREEN ONYANGO**

**JUDGE**

#### **ORDER**

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020, that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**

which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B** of the **Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**MAUREEN ONYANGO**

**JUDGE**