



REPUBLIC OF KENYA



KENYA LAW
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Geni v Otuto (Cause 1124 of 2018) [2023] KEELRC 143 (KLR) (26 January 2023) (Judgment)

Neutral citation: [2023] KEELRC 143 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1124 OF 2018
MN NDUMA, J
JANUARY 26, 2023

BETWEEN

NELSON ONDIEKI GENI CLAIMANT

AND

TOM OTUTO RESPONDENT

JUDGMENT

1. The suit was filed on July 3, 2010 by the claimant. The claimant seeks the following reliefs:
 - (i) Unpaid salary for November and December 2017, at Kshs 20,000 per month, Kshs 40,000.
 - (ii) House allowance for three (3) months in the sum of Kshs 9,000.
 - (iii) Unpaid overtime for 420 hours in the sum of Kshs 60,576.9.
 - (iv) Unpaid holidays worked in the sum of Kshs 3,076.9.
 - (v) Unpaid two rest days in the sum of 12,307.7
 - (vi) One month notice pay – Kshs 20,000 and
 - (vii) Compensation for unfair termination.
 - (viii) Certificate of Service.
 - (ix) Interest and costs.
2. Despite service of the summons to enter appearance and the Statement of Claim, the respondent did not enter appearance nor file a defence to the suit.



3. The matter proceeded to formal proof and the claimant (C.W.1) testified in support of the particulars of claim which are not controverted. The claimant relied on a witness statement dated May 10, 2018 as his evidence in chief. He stated that he was employed by the respondent as a lorry driver on October 24, 2017. That he drove Isuzu FRR Registration No. KCG 397Y. That he was paid a salary of Kshs 20,000 per month.
4. That he worked diligently. That the claimant agreed with the respondent that his salary for the month of November, 2017 will be paid together with that of December, 2017 during the Christmas period so that the claimant could use it for the festive season and for school fees in January.
5. That on December 22, 2017, the claimant transported cargo assigned for Kisii after which the claimant parked the lorry at the respondent rural home in Kibirigo, Nyantaro village in Nyamira County on the instructions of the respondent awaiting the Christmas period.
6. That while at home, he called the respondent to pay his salary. The respondent promised to do so but never did. That the respondent switched off his phone whenever the claimant called him. That after Christmas holiday, the claimant was informed by other Lorry drivers that the Truck he was assigned to was now being driven by someone else.
7. That he was not paid house allowance and was not accommodated by the respondent. That he worked for two rest days and two holidays but was not paid extra salary. That the claimant reported to the Nairobi Labour office. The respondent was summoned there but failed to attend. That the claimant's advocate wrote a demand letter to the respondent which was equally ignored by the respondent. The claimant prays to be awarded as prayed.
8. Upon a careful evaluation of the uncontroverted evidence by the claimant, the Court is satisfied that the claim by the claimant against the respondent has merit and has been proved on a balance of probabilities in respect of unpaid terminal benefits and unlawful and unfair termination of employment without notice to show cause or any reason given in violation of Sections 36, 41, 43 and 45 of the Employment Act, of 2007.
9. The Court awards the claimant all the terminal benefits claimed and also finds that the claimant is entitled to compensation in terms of Section 49(1) (c) and 4 of the Act. In this regard, the claimant lost his employment for no reason assigned. He did not contribute to the dismissal. He was not paid any terminal benefits nor compensated for the loss of his job unfairly. The claimant did not get notice of the termination and so suffered immense loss and damage as a result of loss of means of support during Christmas season and for payment of fees. The claimant did not get a Certificate of Service to help him get alternative employment.
10. The Court has considered all the relevant Regulations and the case of Abisalom Ajusa Magomere and Kenya Nut Company Limited [2014] eKLR which has similarities with this case.
11. The claimant had served the respondent for a period of two months. The Court awards the claimant the equivalent of four (4) months' salary in compensation for the unlawful and unfair dismissal, considering also the inhumane manner in which the termination was effected by the respondent in the sum of Kshs 160,000.
12. In the final analysis, judgment is entered in favour of the claimant against the respondent as follows:-
 - (i) Kshs 160,000 in compensation for the unlawful and unfair dismissal.
 - (ii) Kshs 20,000 in lieu of one month notice.



- (iii) Kshs 40,000 being unpaid November and December 2017, salary.
- (iv) Kshs 9,000 house allowance.
- (v) Kshs 60,579 overtime.
- (vi) Kshs 3,076.9 being unpaid holiday pay and
- (vii) Kshs 12,307.7 for unpaid rest days.
Total award Kshs 304,960.
- (Viii) Interest at Court rates from date of judgment till payment in full.
- (ix) Costs of the suit.

13. The respondent to provide Certificate of service to the claimant within 30 days of judgment

Dated and delivered at Nairobi (*virtually*) this 26th day of January, 2023.

Mathews Nderi Nduma

Judge

Appearances

Mr. Ondigi for claimant

Mr. Ekale – Court Assistant

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