



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. 100 OF 2017

(Before Hon. Lady Justice Maureen Onyango)

EVANS SAGWA RUMURA.....CLAIMANT

VERSUS

INSIGNIA KENYA LIMITED.....RESPONDENT

JUDGMENT

1. Vide his memorandum of claim dated 22nd November 2016 and filed on 20th January ;2017, the Claimant seeks the following orders against the Respondent –

a. A declaration that the Respondent action of sacking the Claimant is illegal, and/or unlawful, that the Claimant is entitled to severance pay, terminal benefits, 1 month in lieu of notice, salary underpayments all totalling to about Kshs.585,000/- as particularized below: -

Three months' salary in lieu of notice.....	90,000.00
Unpaid Leave.....	90,000.00
Service pay for years worked.....	45,000.00
One year's salary for wrongful dismissal.....	360,000.00
Total.....	585,000.00

b. General damages for wrongful dismissal as the court shall assess.

c. Costs of this suit and interest.

d. Any other relief that the Court may deem fit and just to grant.

2. The Respondent was served by registered post but did not file any appearance or response to the memorandum of claim.

3. In view of the fact that the claim was undefended, the Claimant was directed to proceed by way of written submissions and sworn witness affidavit. On 3rd August 2021 the Claimant filed submissions with another statement which was not sworn.

4. I have considered the memorandum of claim, the witness statements on record and submissions.

5. The issues for determination are whether the Claimant was an employee of the Respondent, whether he was unfairly terminated and if he is entitled to the prayers sought.

6. Section 47(5) of the Employment Act provides as follows in respect of the burden of proof in an employment claim –

(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair

termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.

7. In the instant claim, the Claimant has produced a letter of appointment as proof of the employment relationship. I therefore find according to the contract of employment dated 5th May 2014 that the Claimant was employed by the Respondent. The contract however does not state the date of commencement which I will presume to be the date of signing of the contract.

8. According to Section 47(5) an employee must prove that his employment has been terminated. In the memorandum of claim the Claimant states that his services were terminated without reason on 15th January 2015. He sets out the particulars of breach of contract and/or illegality at paragraph 5 of the memorandum of claim as follows –

- i. The Claimant was not given any charges and/or opportunity to defend himself before the sacking aforesaid.
- ii. The Claimant was sacked arbitrarily without reason, notice and/or giving him any audience or at all.
- iii. Failing to give the Claimant any terminal benefits and/or any benefits at all, considering that Claimant had worked for 1½ years.
- iv. Sacking the Claimant.
- v. Failing to comply with provision of the Employment Act, Collective Bargain Agreement (CBA) as to notice and terminal benefits.

9. Although the Claimant was directed to file a witness affidavit, he only filed another witness statement dated 3rd August 2021 but which is not sworn. The same does not qualify as evidence.

10. Even should I assume the witness statement to be admissible under Rule 21 of the Employment and Labour Relations Court (Procedure) Rules, the information therein is not sufficient to prove the Claimant's case under Section 47(5) of the Employment Act. Rule 21 of the Employment Labour Relations Court (Procedure) Rules provides that –

21. Determination by documentary evidence

The Court may, either by an agreement by all parties, or on its own motion, proceed to determine a suit before it on the basis of pleadings, affidavits, documents filed and submissions made by the parties.

11. In the witness statement, the Claimant merely repeats what he stated in the memorandum of claim. At paragraphs 4, 5, 6, 7 and 8 the Claimant states –

4. On or about the 5th day of January, 2015, I reported back to work as usual and I was informed by the Respondent to report to work on a later date, more specifically on the 15th day of January, 2015.

5. On or about the 15th day of January, 2015, the Respondent without any reasonable cause and/or justification, unilaterally terminated my services as their employee, without any justification and without giving me a chance to defend myself.

6. It is my contention that I had worked diligently for the

Respondent and was never reprimanded over claims of indiscipline and/or insubordination.

7. In spite of my clean and/or stellar employment record, I was still terminated from my employment without receiving fair treatment and/or adequate justification for the termination of my employment.

8. I worked for the Respondent for 2 years, earning a last salary of Kshs.30,000/= per month and the termination of my employment has caused me loss and damage.

12. The Claimant does not state the circumstances under which he was terminated. He does not state by whom. He does not state what caused him to be relieved of his duties.

13. The Claimant further has not produced any evidence beyond the contract he filed with the memorandum of claim to prove that he ever reported for duty after the date of the contract. He did not produce evidence that he was even paid any salary. He did not produce evidence of the nature of work that he did other than the description in the contract as a driver.

14. That Claimant did not adduce any evidence in support of his prayer for pay in lieu of notice, unpaid leave or service pay. He did not produce evidence to prove that he was unfairly terminated.

15. For the foregoing reasons I find that the Claimant has not proved his claim and accordingly dismiss the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 31ST DAY OF JANUARY, 2022

MAUREEN ONYANGO

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st 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