



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 2469 OF 2016

(Before Hon. Justice Dr. Jacob Gakeri)

ANSELM OKIRU EKISA

CLAIMANT

VERSUS

KNIGHTS ARMOUR AFRICA LIMITED

RESPONDENT

JUDGMENT

1. This suit was instituted by a memorandum of claim dated 24th November 2016 filed on 30th November 2016. The Claimant's case is pleaded as follows:
2. That he was employed by the Respondent as a Supervisor at Kshs.14,000/- per month on 7th December 2015 until 18th April 2016 when he was terminated without notice. That the employment agreement was verbal.
3. That he would report to work at 8.00 am and leave at 6.00 pm and worked for a total of four (4) months.
4. He avers that on 1st April 2016, while in the course of his duties he was involved in an accident and the employer was notified. The motorist involved took him to hospital and the Respondent's Director, one Mr. Charles Mwangi visited him in hospital.
5. It is further averred that he had not been paid the salary for March 2016 and had been informed that the salary was retained to cater of the damage to the motorcycle the Claimant was riding but was eventually paid on 11th April 2016 after texting the Director and the Chairman of the company.
6. That he visited the company offices on 11th April 2016 and was advised to go home for recovery and report back when fully recovered.
7. That he reported back on 18th April 2016, dressed up for work and proceeded to the Director's office for fuel money but was informed that the Chairman of the company had terminated his employment. It is further averred that the Chairman had indicated that he was claiming compensation for the damaged motor cycle.
8. That when he asked for off days and sick days, he was requested to do so in writing and did so.
9. The Claimant alleges that he was terminated in a casual manner with neither notice nor pay in lieu of notice. That he was injured while serving the Respondent.
10. The Claimant prays for –
 - (a) Declaration that the Respondent pays the following unpaid dues: -
 - (i) One month's salary in lieu of notice Kshs.14,000.00
 - (ii) Overtime Kshs.7,321.50
 - (iii) Off days not taken Kshs.7,000.00
 - (iv) Salary for 18 days worked in April Kshs.84,060.00

(v) Accrued leave Kshs.3,267.00

(vi) Compensation for unfair dismissal Kshs.168,000.00

Total Kshs.207,994.50

(b) Costs of this suit

(c) Interest on (a) and (b).

11. Despite service of the memorandum of claim and list of documents upon the Respondent on 21st March 2017, the Respondent neither entered appearance nor filed a response and the suit proceeded undefended. Formal proof took place on 24th February 2020 when the Claimant testified in Court.

Evidence

12. The Claimant adopted the written statement. He testified that he was employed by the Respondent as a rider and the contract was verbal. That when he returned after full recovery, he was given a clearance letter (uniform return form) on record and had prepared and filed a schedule of overtime claim. He prayed for the reliefs tabulated in the memorandum of claim.

Claimant's Submissions

13. The Claimant relied on the submissions dated 13th March 2020 which tabulates the reliefs as prayed in the memorandum of claim. It is submitted that the Claimant's services were terminated without notice as required by the provisions of the Employment Act, 2007.

14. That the Claimant is claiming for terminal dues on account of termination without notice and no letter of employment contrary to the provisions of the Act and prays for Kshs.207,994.50.

Analysis and Determination

15. The issues for determination are whether the Claimant's termination was unfair and whether he is entitled to the reliefs sought.

16. As regards termination, the Claimant's uncontroverted evidence is that he was terminated on 18th April 2016 without any notice or pay in lieu of notice. That he had not recovered from injuries sustained in a motorcycle accident on 1st April 2016 and had looked forward to resuming duty and had in fact booked himself in and wore his uniform on the material day. He testified that both the contract and the dismissal were verbal and there is no evidence to the contrary.

17. Sections 45(2), 43 and 41 of the Employment Act prescribe the basic requirements for a fair termination. These sections set forth the substantive and procedural ingredients of a fair termination.

18. The Court of Appeal decisions in **Naima Khamis v Oxford University Press (EA) Limited [2017] eKLR** and **Standard Group Limited v Jenny Luesby [2018] eKLR** authoritatively underscore the essence of substantial and procedural fairness in the termination of contracts of employment.

19. In the instant case, it is evident that the Claimant was given neither the reason for termination as required by Section 45(2) of the Employment Act nor was the requisite procedure complied with.

20. It is the finding of the Court that termination of the Claimant's contract of employment on 18th April 2016 was unfair for want of substantive and procedural propriety.

Reliefs

21. Having found that the Claimant's termination was unfair, the reliefs are awarded as follows –

(a) One month's salary in lieu of notice

22. The Respondent terminated the Claimant's employment without a notice as required by Section 35 of the Employment Act and without compliance with Section 36 of the Act. The sum of **Kshs.14,000/-** is awarded as pay in lieu of notice.

(b) Overtime

23. The evidence on record demonstrates that the Claimant computed the claim for overtime and furnished the Court with the tabulation and the basis of the tabulation. In the absence of evidence to the contrary on the reporting and departure time, the sum of **Kshs.7,321.50** is awarded as overtime pay.

(c) Off days not taken

24. Although the Claimant averred that he reported to work at 9.00 am and left at 6.00 p, he did not indicate how his work week was structured. Neither the written statement nor the oral evidence makes reference to off days. The claim is **disallowed**.

(d) Salary for 18 days worked in April 2016

25. According to the evidence on record, the Claimant was involved in an accident on 1st April 2016. When he reported on 11th April 2016, he was informed to go back home for purposes of recovery and when he reported on 18th April 2016, ready and willing to resume work, he was dismissed unceremoniously.

26. It is not in dispute that the Claimant was still an employee of the Respondent but on sick off and the termination was effected on 18th April 2016. Consequently, the sum of **Kshs.8,406.00** is awarded for the 18 days worked in April 2016.

(e) Accrued leave

27. The Claimant led no evidence of his leave entitlement and made no reference to it in his statement. In the absence of relevant particulars, the claim is **disallowed**.

(f) Compensation for unfair dismissal

28. Having found that the Claimant's termination was unfair for want of compliance with the provisions of the Employment Act, the Claimant is eligible for the discretionary remedy provided by Section 49(1)(c) of the Employment Act subject to the guidance provided by Section 49(4) of the Act.

29. Considering that the Claimant worked for the Respondent for four (4) months and 11 days and wished to continue and served diligently until 1st April 2016 when he was involved in an accident, the equivalent of one (1) month's salary as compensation is fair, the sum of **Kshs.14,000/-** is awarded.

Conclusion

30. **Judgment is entered for the Claimant for the sum of Kshs.43,727.50 with costs.**

31. Interest at Court rates from the date of judgment till payment in full.

32. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 27TH DAY OF JANUARY 2022

DR. JACOB GAKERI

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.

DR. JACOB GAKERI

JUDGE