



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 1287 OF 2017

SAMUEL MUTISYA KING’OO.....CLAIMANT

VERSUS

CRJE (EAST AFRICA) LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. This claim is brought by Samuel Mutisya King’oo against CRJE (East Africa) Limited. The claim is contained in a Statement of Claim dated 27th June 2017 and filed in court on 7th July 2017. The Respondent entered appearance on 30th April 2019 but did not file a Response.
2. The matter was therefore undefended and at the trial, the Claimant testified on his own behalf.

The Claimant’s Case

3. The Claimant states that he was employed by the Respondent on 17th September 2015, as a Mason. He adds that he earned a daily wage of Kshs. 700, which was paid weekly by M-Pesa.
4. The Claimant claims that he worked from Monday to Sunday with no off day. He avers that he did not go on annual leave but was compensated for it.
5. The Claimant states that on 16th April 2017, he reported for work but was told by one Mr. Wang that his employment with the Respondent had come to an end.
6. The Claimant was subsequently given a two week notice by the Human Resource Manager, which notice the Claimant was required to sign.
7. The Claimant states that that upon asking for the reason for the termination of his employment, he was told that he had not worked well at a site in Karen.
8. The Claimant claims that the termination was actuated by malice and was in breach of the Respondent’s statutory duty. He adds that he was not given an opportunity to defend himself.
9. The Claimant now seeks the following:
 - a) 1 month’s salary in lieu of notice.....Kshs. 24,150
 - b) House allowance.....63,000
 - c) 12 months’ salary in compensation.....289,800
 - d) Certificate of Service
 - e) Costs plus interest

Findings and Determination

10. There are two (2) issues for determination in this case:

- a) Whether the Claimant has made out a case of unlawful termination of employment;
- b) Whether the Claimant is entitled to the remedies sought.

Unlawful Termination?

11. The Claimant states that his employment was terminated on 16th April 2017 on account of poor workmanship at a site in Karen. He further states that he was not given any opportunity to defend himself at the shop floor. The Respondent did not file a Response to the Claimant's claim and did not call any witness to counter the Claimant's testimony.

12. The Claimant's claim was therefore unchallenged and the Court found no reason to disbelieve his testimony. If indeed the Claimant was guilty of poor workmanship as alleged, the Respondent ought to have taken him through a disciplinary process as commanded by Section 41 of the Employment Act. Having failed to do so, the Respondent failed to establish a valid reason for terminating the Claimant's employment as required under Section 43 of the Act.

Remedies

13. I therefore award the Claimant six (6) months' salary in compensation for unfair termination of employment. In arriving at this award, I have taken into account the Claimant's length of service and the Respondent's unlawful conduct in the termination transaction.

14. I further award the Claimant one (1) month's salary in lieu of notice.

15. The Claimant also claims house allowance. However, by his own testimony his pay was calculated on the basis of a daily wage, which is ordinarily inclusive of house allowance. The claim for house allowance therefore fails and is disallowed.

16. Finally, I enter judgment in favour of the Claimant as follows:

- a) 6 months' salary in compensation.....Kshs. 126,000
- b) 1 month's salary in lieu of notice.....21,000
- Total.....147,000**

17. This amount will attract interest at court rates from the date of judgment until payment in full.

18. The Claimant is also entitled to a Certificate of Service plus costs of the case.

19. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 10TH DAY OF FEBRUARY 2022

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JUDGE APPEARANCE:

MR. GOMBA FOR THE CLAIMANT

MR. MURITHI H/B FOR MR. ASHITIVA FOR THE RESPONDENT