REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE N0. 741 OF 2016

ABRAHAM MUKUSI LUSALIKHE.....CLAIMANT

VERSUS

ANTHONY AUTO GARAGE LIMITED..... RESPONDENT

JUDGMENT

1. The claimant seeks compensation for wrongful termination and payment of terminal benefits including:-

   (a) **One month salary in lieu of notice – Kshs 15,000**

   (b) Payment in lieu of leave for the year 2015 – Kshs

   15,000

   (c) Unpaid salary for the month of September, 2015 –

   Kshs15,000.

2. The suit was filed on 4th May, 2016. The claimant also prays for a Certificate of Service. The suit is not defended despite service of summons to enter appearance and Statement of Claim.

3. The respondent filed memorandum of appearance vide Mukele Ngacho & Co. Advocates but did not file a Statement of Claim nor did they attend the hearing of the suit.

4. C.W. 1 testified under oath and adopted a witness statement filed on 4TH May, 2016 as his evidence in chief.

5. C.W.1 testified that he was employed by the respondent in the year 2012 as a Mechanic earning a monthly salary of Kshs 15,000.

6. That he worked diligently until the 15th June, 2015, when the respondent provided him with unsafe system of work and was ordered to move folk lift arms and the same fell on the claimant crushing his finger. The claimant suffered loss and pain.

7. That the claimant instructed his advocate to lodge a claim in negligence against the employer being Civil Case CM No. 4930 of 2015.

8. That the respondent was served with summons to enter appearance on 30th September, 2015, and the respondent immediately terminated the services of the claimant without notice, notice to show cause, any valid reason nor any opportunity to be heard.

9. The Court finds that the termination of employment of the claimant was unlawful and unfair and in violation of Sections 36, 41, 43 and 45 of the Employment Act, 2007.

10. The claimant has proved on a balance of probabilities that he is entitled to the reliefs sought and the Court awards him:-

    (a) One month salary in lieu of notice in the sum of Kshs 15,000.

    (b) Unpaid leave days for the year 2015 in the sum of Kshs 15,000.

(c) Unpaid salary for September, 2015 in the sum of Kshs 15,000.

(d) ***The respondent to provide the claimant with a Certificate of Service within 30 days of this judgment.***

11. The claimant is also entitled to compensation in terms of Section 49(1) (c) and 4 of the Employment Act. In that respect the claimant did not contribute to the termination. The claimant suffered loss of employment unjustifiably and was not paid terminal benefits nor compensation for the loss. The claimant had not obtained alternative employment and was victimized for daring make a claim for injuries sustained in the course of his employment. This is an aggravating circumstance. The claimant had served the respondent diligently for a period of three (3) years.

12. The Court relies on the similar case of **Bansio Ngota –vs- Market Masters Limited, ELRC Cause No. 438 of 2016** in which the Court awarded equivalent of 10 months' salary in compensation

13. The Court awards the claimant the equivalent of ten (10) months' salary in compensation for the unlawful and unfair termination of employment in the sum of Kshs 15,000.

14. In the final analysis, Judgment is entered in favour of the Claimant against the Respondent as follows:-

(a) Kshs 45,000 terminal benefits

(b) Kshs 130,000 compensation.

Total award Kshs 195,000.

(c) Interest at Court rates from date of judgment till payment in full.

(d) Certificate of Service to be provided in 30 days.

(e) Costs of the suit.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 17TH DAY OF MARCH, 2022

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Wachira for Claimant

Mr. Mukele for Respondent

Mr. Ekale – Court Assistant