



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MALINDI

ELRC NO 77 OF 2018

BENJAMIN DALU MNYIKA.....CLAIMANT

VERSUS

VAMBECO ENTERPRISES LIMITED.....RESPONDENT

JUDGMENT

1. This is a claim for unfair termination. The Claimant alleges that on 17th May 2018 he was wrongfully terminated from his employment with the Respondent when the Respondent sent him away without justifiable cause. As a result, he has filed this claim to seek compensation for wrongful termination.

2. From the record, it is apparent that the court issued notice of summons to the Respondent on 1st April 2021. The summons was then served on the Respondent on 16th April 2021 and an affidavit of service by one Susan Makau filed.

3. Despite service of the summons and the accompanying pleadings, the Respondent did not enter appearance or file a defense in the matter. Consequently, the cause proceeded as undefended.

4. The Claimant states that he was employed as a security person by the Respondent in March 2012. That his starting salary was Ksh 15,000 per month. That he worked for the Respondent until 17th May 2018 when the Respondent terminated his services. That the aforesaid termination was without reason and in total disregard of due process. The Claimant prays for a number of reliefs as set out in the Amended Memorandum of Claim.

5. I have considered the claim and the evidence tendered. The National Social Security Fund printout appearing as document number one (1) on the list of documents filed by the Claimant is sufficient proof of the fact of employment between the parties herein. I have also considered the demand notice issued by the Claimant's advocates dated 20th May 2018 indicating that the Claimant had been terminated. In the absence of evidence to the contrary, I hold that this is sufficient evidence of the fact of the Claimant having been terminated.

6. As the suit was undefended, there is no evidence to controvert the Claimant's assertion that his termination was unfair. Consequently, the court must take the claim as established at least in so far as liability is concerned (see *Peter Ngigi Kuria & another (Suing as the legal representatives of the Estate of Joan Wambui Ngigi) v Thomas Ondili Oduol & another [2019] eKLR*). Accordingly, I find that the Claimant has established that he was unfairly terminated.

7. On the reliefs sought, I will substantially rely on the guide under section 49 of the Employment Act to determine what to order. There is no evidence that the Claimant was given notice of termination as is required under section 35 of the Employment Act. Absent this evidence, the Claimant is entitled to salary for one month in lieu of the notice. There is also no evidence to controvert the Claimant's evidence that he was not paid house allowance for the duration of his service with the Respondent. The same applies to his claim for accrued leave. I will therefore enter judgment for him as follows: -

a) Pay in lieu of notice Ksh. 15,000/=.

b) Pay in lieu of leave per year for six hears Ksh 63,000/=.

c) House allowance @15% of monthly pay Ksh. 164,250/=.

8. The Claimant was entitled to service pay on termination in terms of section 35 of the Employment Act. However, I will order compensation in terms of section 49 of the Act in addition to the awards in paragraph seven (7) above to cover the loss suffered. Accordingly, I ward him compensation for wrongful termination that is equivalent to eight (8) months of his gross salary of Ksh. 15000 +

House Allowance of Ksh. 2,250 = Ksh. 17250 x 8 = Ksh. 138, 000/=.

9. I award the Claimant interest on the sums awarded at court rates from the date of institution of the suit till payment in full.

10. Costs of the suit to the Claimant.

11. The monetary compensation herein to be subject to statutory deductions, where applicable, as provided under section 49 of the Employment Act.

12. The Claimant is also entitled to a Certificate of Service under section 51 of the Employment Act. The Respondent is ordered to issue this certificate.

13. Any other relief not hereby expressly granted is deemed as declined.

Dated, signed and delivered on the 4th day of April, 2022

B. O. M. MANANI

JUDGE

In the presence of:

Philip for the Appellant

No appearance for the Respondent

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 April 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M. MANANI

JUDGE