



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA

CAUSE NO. 37 OF 2018

OBWANA ISYEPE EZEKIEL.....CLAIMANT

VERSUS

ALPHA GRAIN MILLERS (K) LTD.....RESPONDENT

JUDGMENT

1. The claim was filed by the claimant on 10/5/2018. The claim was served on the respondent and was responded to. The respondent did not call any witness to defend the case despite of having participated in the hearing. C.W.1, the claimant testified that he was employed by the respondent on 2/10/2017 as a dispatch Supervisor at a salary of Kshs.70,000 per month. That he had resigned from Mumias Sugar Company to take up the new appointment. That the claimant worked until 31/3/2018, a period of six (6) months, and was declared redundant by the respondent.

2. That he was the only one declared redundant. That he was not given notice of redundancy, and was only informed of the decision by a telephone call on 10/3/2018. That he was not called to a meeting to explain why he should not be declared redundant and/or to be given reasons why he was selected for redundancy. That he received the salary for March, 2018 on 31/3/2018 and was paid in lieu of one month notice. The claimant was not paid severance pay. C.W.1 said he was in charge of the inventory at Athi River plant and was promoted to Dispatch Supervisor. That his work was still there and his job had not become superfluous in terms of section 2 and 40 of the Employment Act, 2007, since he supervised staff; supervised receipt of raw materials and made reports on operations and stock management.

3. The claimant states the termination was unlawful and unfair. That he suffered loss and damages, could not pay school fees for his children. He was listed by the Credit Bureau. That he got a Certificate of Service and was 46 years old then. That he has applied for jobs, but had not gotten one yet. That he had a Bachelor of Business Administration degree from Kenya Methodist University and Diploma in logistics from Banda College Mombasa.

4. The claimant prays for compensation for the unlawful dismissal. The evidence by the claimant was not controverted and the claimant has proved his case on a balance of probability that the respondent terminated his employment on grounds of redundancy without following the mandatory provisions under Section 40(1) (a) (c) (e) and (g) of the Employment Act, 2007.

5. The termination was therefore procedurally and substantively unlawful and unfair in violation of Sections 40, 41, 43 and 45 of the Employment Act, 2007.

6. The claimant is entitled to compensation under Section 49(1) (c) and (4) of the Employment Act, 2007.

7. The claimant had served the respondent for a period of 6 months and had a good record of employment. The claimant's employment was terminated for no fault of his own. The claimant had recently been lured to leave Mumias to join the respondent. The claimant suffered loss and damage and was unable to meet his expenses including school fees and was listed on Credit Bureau. The claimant was not paid severance pay for the period served. The claimant was not compensated for the lost job. The claimant wished to continue working till retirement age of 60 and was 46 years at the time of unlawful termination.

8. The Court has considered the case of **Kenya Plantation and Agriculture Workers, Union –vs- Harvest Limited (2014) eKLR** on the need to adhere to mandatory provisions of Section 40(1) of the Employment Act, 2007 and also the case of **African Nazarene University – vs- David Mutevu & 3 others (2017) eKLR** in arriving at the above decision.

9. The claimant is entitled to compensation and is awarded 3 months' salary in compensation following the reasons set out herein before in the sum of Kshs.240,000.

10. The award is payable with interest at Court rates from date of judgment till payment in full. The respondent to pay costs of the suit.

Dated and delivered at Nairobi this 11th day of February, 2021.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this judgment has been delivered to the parties online with their consent. 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 18 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.

MATHEWS N. NDUMA

JUDGE

Appearances

Claimant in person

Sagana Biriq Advocate for the respondent

Chrispo: Court clerk