



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1499 OF 2016

DICKSON ONYANGO OKOTH.....CLAIMANT

VERSUS

NYATI (2002) KENYA LIMITED.....RESPONDENT

JUDGMENT

1. The suit was filed on 1/8/2016 by the Claimant praying for the following reliefs:-

- (a) One month salary in lieu of notice Kshs.12,0000
- (b) Severance pay for 9 years – Kshs.108,000
- (c) 9 days unpaid salary Kshs.3,600
- (d) Compensation for unlawful termination of Employment.
- (e) Costs and interest.

2. The respondent did not file a statement of response despite service of summons and Statement of Claim on 17/8/2016 and Affidavit of Service filed on 19/4/2017 by Moses Onyango Otongo, a duly authorized Process Server.

3. The matter proceeded to formal proof and the Claimant filed Affidavit evidence sworn to by himself on 16th November, 2020.

4. The Claimant testified that he was employed by the respondent on 9/9/2006 as a welder. That he was paid Kshs.12,000 per month through his Equity Bank account. The claimant produced the bank statement.

5. That on 8/9/2015 while working at Boita Tea Factory in Kericho the claimant and a colleague named Kennedy Nyalianga went to look for an appropriate cable at about 12.30 p.m. and upon their return after lunch hour at 2 p.m they were both sent home by the gate man who had been instructed by the site manager Mr. Silvester Owino not to let him back to work.

6. That on 10/9/2015, the claimant received an SMS message from the site manager informing the claimant that he had been dismissed from employment due to absconding duty.

7. The Claimant stated that he was not given opportunity to explain himself about what transpired on 8/9/2015.

8. The claimant stated further that he had no warning or subjected to disciplinary hearing since he started working for the respondent on 9/9/2006. That he worked diligently and had a good record at work.

10. That the summary dismissal was unlawful and the claimant was not given notice or paid in lieu of notice nor was he paid any terminal benefits.

11. The claimant issued a demand letter to the respondent but same was not heeded. That the claimant prays for the reliefs set out in the Statement of Claim.

9. The testimony by the Claimant is not controverted. The Claimant has proved on a balance of probabilities that he was unlawfully and unfairly dismissed by the respondent without notice and without payment of any terminal benefits in violation of Sections 36, 41, 43 and 45 of the Employment Act, 2007.

10. Accordingly, the claimant is awarded terminal benefits set out in the Statement of Claim as follows:-

- a. Kshs.12,000 in lieu of one month notice.
- b. Kshs.3,600 being salary for 9 days worked and not paid.

11. The claim for payment of Severance pay has not been proved since the claimant was not declared redundant and the same is disallowed.

12. The claimant is however entitled to compensation for the unlawful and unfair dismissal in terms of section 49(1) (c) and (4) of the Employment Act, 2007. In this regard the claimant had served the respondent diligently for a period of 9 years and did not contribute to the termination. The claimant was not paid any compensation or terminal benefits upon dismissal. The claimant lost his employment without notice and with no hearing at all and he suffered loss and damage for the loss of means of livelihood and prospects of continued work.

13. The Court relies on the case of **Abisalom Ajusa Magomere –vs- Kenya Nut Company Limited [2014] eKLR** in which the claimant was awarded 12 months' salary for unlawful termination and all the factors cited above to award the claimant the equivalent of ten (10) months' salary in compensation for the unlawful and unfair dismissal in the sum of Kshs.120,000.

14. In the final analysis judgment is entered in favour of the claimant against the respondent as follows:

- a. Kshs.12,000 in lieu of notice.
- b. Kshs.3,600 arrears salary
- c. Kshs.120,000 in compensation Total award **Kshs.115,600**.
- d. Interest at Court rates from date of judgment till payment in full.
- e. Costs of the suit.

Dated and delivered at Nairobi this 10th 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

M.s Karanja for claimant

Ekale: Court Assistant