



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO.598 OF 2017**

**MOSES WARUKIRA KIBOCHI.....CLAIMANT**

**VERSUS**

**LOTOS PROPERTY MANAGEMENT LIMITED.....RESPONDENT**

**JUDGEMENT**

The claimant filed his Memorandum of claim on 28<sup>th</sup> March, 2017; he served the respondent and there was no appearance or defence filed. The court satisfied that service was effected issued hearing notice and heard the claimant on his evidence.

The claim is that in the year 2016 the claimant was employed by the respondent as a night auditor/night manager and issued with letter of appointment dated 18<sup>th</sup> December, 2015. He worked diligently until 11<sup>th</sup> November, 2016 when the manager George Keli terminated his employment through a phone message and without being given any reason or payment of his terminal dues.

At the time the claimant had a one year contract with the respondent and had only worked for 5 months earning Ksh.30, 000 per month.

The claim is for the payment of the following dues;

- a) Certificate of service;
- b) Salary for November, 2016 Ksh.30,000;
- c) Notice pay ksh.30,000;
- d) Unpaid term of contract at 5 months Ksh.150,000; and
- e) Compensation for 12 months.

The claimant testified in support of his claim that upon employment by the respondent he worked diligently until his employment was unfairly terminated without payment of his dues and which are outlined in the Memorandum of claim and should be paid with costs.

**Determination**

The respondent appointed the claimant as Night Auditor/Night Manager vide letter dated 18<sup>th</sup> December, 2015 and on terms that his work contract was to commence from 21<sup>st</sup> May, 2016 to 22<sup>nd</sup> April, 2017 a period of one year.

It was also a term of the contract that *employment shall be terminated automatically after the date stipulated hereinabove, given that no renewal agreement is reached.*

Employment terminated on 18<sup>th</sup> December, 2016. Without any defence or attendance by the respondent, the court takes the evidence by the claimant as correct.

In employment and labour relation, before employment can lawfully be terminated, section 41 of the Employment Act, 2007 must be adhered to. Such requires issuance of a notice, hearing and written reasons be given to the employee.

Fair labour practice and due process required the claimant be issued with notice; allowed to attend and defend himself on any matter of misconduct, if any, and to have another employee of his choice attend. There being no attendance by the respondent, the court finds section

41, 43 and 45 of the Employment Act, 2007 were not followed. See **Maxwell Miyawa & 7 others versus Judicial Service Commission [2017] eKLR.**

The court finds there was no due process of the law in effecting termination of employment as required under section 45(2)(c) read together with 45(5)(a) of the Act;

*(2) A termination of employment by an employer is unfair if the employer fails to prove—*

...

*(c) that the employment was terminated in accordance with fair procedure.*

...

*(5) In deciding whether it was just and equitable for an employer to terminate the employment of an employee, for the purposes of this section, a labour officer, or the Industrial Court shall consider—*

*(a) the procedure adopted by the employer in reaching the decision to dismiss the employee, the communication of that decision to the employee and the handling of any appeal against the decision;*

*(b) ...*

The court finds, employment terminated unfairly. The remedies sought shall be assessed accordingly.

A certificate of service is due pursuant to section 51 of the Employment Act, 2007.

Salary for work done is due where not paid. There is no evidence that the claimant was paid for November, 2016 and Ksh.30, 000 is payable.

Notice pay is due pursuant to section 35 of the Employment Act, 2007 at one month all at Ksh.30, 000.

On the finding that the claimant's employment was terminated unfairly, section 49 of the Employment Act, 2007 allow the court to award for the remainder term of the contract and or compensation for a maximum of 12 months. As the claimant had a fixed term contract and legitimately expected to serve it save for the unfair termination of his employment, the payment of the remainder of the term shall be sufficient compensation. The contract had 5 more months unspent and total due is Ksh.150, 000.

Costs are payable as the claimant has succeeded on his claims.

Echoingly, judgement is hereby entered for the claimant against the respondent in the following terms;

(a) 5 months compensation at ksh.150,000;

(b) Notice pay Ksh.30,000;

(c) Salary for November, 2016 Ksh.30,000;

(d) Certificate of service shall issue;

(e) Costs of the suit; and

(f) Where dues under (a), (b) and (c) are not paid within 60 days, interests shall accrue based on court rates.

**DELIVERED IN OPEN COURT AT NAIROBI THIS 9<sup>TH</sup> DAY OF FEBRUARY, 2021.**

**M. MBARU**

**JUDGE**

In the presence of:

Court Assistant: Okodoi

..... and .....