



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 45 OF 2018

RICHARD WANJALA.....CLAIMANT

v

JRS GROUP LIMITED.....RESPONDENT

JUDGMENT

1. Richard Wanjala (the Claimant) sued JRS Group Ltd (the Respondent) on 29 February 2018, alleging unfair termination of employment.
2. The Respondent filed a Response on 30 April 2018, and the Cause was heard on 23 October 2019 when the Claimant testified and on 26 January 2021, when the Respondent's Night Manager testified.
3. The Claimant filed his submissions on 2 February 2021, while the Respondent filed its submissions on 15 April 2021 (it was stated therein that the Claimant had not served his submissions).
4. The Court has considered the pleadings, evidence and submissions.

Unfair termination of employment

5. The Respondent employed the Claimant as a security guard. He testified that his employment was terminated on 28 December 2017.
6. On the circumstances leading to the separation, the Claimant stated that on the material day, the wife of the client he was guarding sent him to buy bread from a supermarket and while cycling to the supermarket, he was called to go to the office.
7. Under cross-examination, the Claimant stated that he met his Supervisor on the way to the supermarket and on returning to the work assignment, he found the Operations Officer who instructed him to go to the office in the morning.
8. The Claimant stated that he went to the office the next morning and that he explained what had transpired the previous night, at which point he was instructed to go home.
9. The Respondent's witness denied that the Claimant's employment was terminated. He testified that a supervisor had seen the Claimant carrying a passenger in Nyalenda at a time he was supposed to be on assignment, and when the Supervisor went to the assignment, he waited for the Claimant for over 30 minutes, and when he arrived, he explained that he had gone to buy food. At the time, the Claimant did not have any food.
10. The witness further stated that he instructed the Claimant to report to the office the next day, but he never turned up.
11. Pursuant to section 47(5) of the Employment Act, 2007, the Claimant had the burden of showing at the first instance that an unfair termination of employment occurred.
12. The Claimant did not reveal in the filed witness statement the name of the person who allegedly terminated his contract on the morning of 28 December 2017.
13. The Court finds that the Claimant did not discharge the burden expected of him by section 47(5) of the Employment Act, 2007.
14. Compensation and salary in lieu of notice are therefore not available as remedies.

Breach of contract/statute

Untaken leave

15. The Claimant alleged that he had not gone on leave for 17 years. He claimed Kshs 195,500/- on account of the leave. He did not state whether he applied for leave and was denied. He equally did not state that he carried forward the leave with the approval of the Respondent.
16. Section 28(4) of the Employment Act, 2007 circumscribes the number of leave days that can be carried forward.
17. The Respondent did not produce the Claimant's leave records.
18. In light of the above factors and section 10(3) of the Employment Act, 2007, the Court will only allow leave for the last 18 months of the contract, being the equivalent of one and a half salary as commuted leave (the Claimant was earning Kshs 11,500/- per month).

Overtime/holiday pay

19. In respect of overtime, the Claimant sought a total of Kshs 330,000/-.
20. The Claimant did not provide any evidential foundation to this head of the claim, such as agreed or prescribed working hours in the sector the Respondent operated in. No particular Regulation of Wages Order cited.
21. The Court declines relief.

Salary for December 2017

22. The Respondent admitted in the submissions that the Claimant had not collected his December 2017 salary balance of Kshs 8,450/-. The Court finds the same due.

Conclusion and Orders

23. From the foregoing, the Court finds no merit in the Cause save to find that the Claimant is entitled to and is awarded:

(i) Accrued leave	Kshs 17,250/-
(ii) December 2017 wage	Kshs 8,450/-
TOTAL	Kshs 25,700/-

24. The Claimant did not serve his submissions within agreed timelines. Each party to bear its own costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN NAIROBI ON THIS 28TH DAY OF APRIL 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant	Anyumba & Associates
For Respondent	ROW Advocates LLP
Court Assistant	Chrispo Aura