



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 2439 OF 2016

BETWEEN

MICAH GENTUNYWA OMBONGI.....CLAIMANT

VERSUS

LABORATORY AND ALLIED LIMITED.....RESPONDENT

Rika J

Court Assistant: Emmanuel Kiprono

Nyabena Nyakundi & Company Advocates for the Claimant

George Gilbert Advocates for the Respondent

JUDEGMENT

1. The Claimant filed his Statement of Claim on 25th November 2016. He avers, he was employed by the Respondent on or about 16th June 2014, as a Sales Representative. He earned a monthly salary of Kshs. 42, 000, later increased to Kshs. 60,798 monthly. He avers, the Respondent terminated his contract on or about 30th August 2016, without notice, letter to show cause, or the benefit of a disciplinary hearing. He was denied terminal benefits. He seeks Judgment against the Respondent as follows: -

- a. 1-month salary in lieu of notice at Kshs. 60,798.
- b. Leave at Kshs. 29,250.
- c. Accomodation / relocation refund at Kshs. 9,500.
- d. Service gratuity at 15 days' pay for each completed year of service [2 years].
- e. 12 months' salary in compensation for unfair termination at Kshs. 729,576.

Total...Kshs. 889, 922.

Less paid...Kshs. 67,361.

Due... Kshs. 822,561

f. Declaration that termination was unfair.

g. Respondent be ordered to compensate the Claimant for unfair and wrongful termination, equivalent of 12 months' salary

[repetitious].

h. Any other suitable orders.

i. Costs.

j. Interest.

2. The Respondent filed its Statement of Response on 15th February 2017. It conceded that the Claimant was employed by the Respondent, on a monthly salary stated in the Claim. He was issued notice of termination of 1 month, and paid salary for the notice period which was in the month of August. He was given ample time to defend himself, before termination. He was paid all his dues, including annual leave at Kshs. 29,250. He is not owed any terminal dues. Termination was based on valid reason, under the Employment Act, and the contract of employment.

3. The Claimant gave his evidence, and rested his Claim, on 21st January 2021, the same day an Assistant Human Resource Officer, Roseline Muinde, gave evidence for the Respondent, closing the hearing.

4. The Claimant adopted as his evidence, the contents of his Statements of Claim and Witness on record. He adopted Documents filed with the Claim, as his exhibits. His contract was terminated by Respondent's CEO and the Human Resource Manager. He was not given a letter of termination. He did not sign a letter of termination exhibited by the Respondent. He was not taken through a disciplinary process. He was paid salary for the month of August and leave days. He relocated from Nairobi to Kitui. He was not paid relocation allowance. He was not given details of alleged loss of trust and confidence by the Respondent. He had been promoted the previous year. He was not given specific reason for termination.

5. Cross-examined, he told the Court that he did not have any receipts regarding relocation to Kitui, in his exhibits. He did not have any document on relocation policy. He claims leave even though it was paid. The prayer should not be there. He was subscribed to the N.S.S.F. He claims service gratuity. Employers can terminate contract on notice. He was summoned by the CEO through the HRM. It is his position that termination was by both Officers.

6. Roseline Muinde was not the Human Resource Manager, she told the Court. The HRM left employment a day before the hearing in Court. Rosaline relied on the Claimant's personnel file and the Statement of Witness filed by the HRM, Margaret Wanjiru.

7. Cross-examined, Rosaline told the Court that she joined the Respondent in August 2017. The Claimant had already left employment. She could not tell if the Claimant signed the letter of termination. There was no letter to show cause. There was no hearing. Salary for August and leave days were paid. The Claimant did not have warnings in his record. The reason for termination is given in the letter of termination, and included loss of trust and confidence in the Claimant. No details were given, disclosing the reason why the Respondent lost trust and confidence in the Claimant. There was valid reason to justify termination.

The Court Finds: -

8. It is clear from the evidence of both Parties, that the Claimant was employed by the Respondent as a Sales Representative, between June 2014 and August 2016. His last salary was Kshs. 60,798. His contract was terminated by the Respondent on or about 30th August 2016. He was paid salary for the month of August 2016, and pending leave days. He does not pursue the sum of Kshs. 29,250, prayed as leave pay.

9. It is admitted by the Witness for the Respondent that the Claimant was not issued a letter to show cause why he should not be dismissed, and that he was not heard on any allegation. The Respondent alleges to have lost trust and confidence with the Claimant, without assigning any reason for the loss. Failing this the Respondent postulates that it was within its discretion to terminate the contract on notice.

10. The Court is satisfied that the Respondent did not meet the statutory threshold of fair termination, prescribed under Sections 41, 43 and 45 of the Employment Act. The Respondent did not discharge its evidential burden under Section 47[5] of the Employment Act, to justify termination. The Claimant has established that termination was unfair, for want of valid reason and fair procedure. He merits and is allowed the prayer for compensation for unfair termination.

11. He had worked a modest 2 years. He does not justify his prayer for compensation equivalent of 12 months' gross salary. He was paid salary for August 2016 and leave dues. He did not tell the Court how long he expected to go on working with the Respondent or whether he looked for and secured or failed to secure, an alternative job. He had been promoted close to the date of termination, and his record was clean. He did not contribute in any known way, for the decision to terminate his contract. Termination suffered imperfections of substantive as well as procedural character. ***He is granted equivalent of 6 months' gross salary at Kshs. 364,788, in compensation for unfair termination.***

12. There was no clear evidence on the notice of termination alleged to have been issued by the Respondent, dated 29th July 2016. The Claimant denied receipt, and the signature purported to be his, acknowledging receipt is disputed. The letter indicates it was received on 18th August 2016, which assuming the notice was served upon the Claimant, would not amount to 1-month notice. ***He is allowed the prayer for notice at Kshs 60,798.***

13. His prayer for relocation allowance, is bereft of factual and legal support, and is declined. He confirmed under cross-examination that he was subscribed to the N.S.S.F, which would bar him from claiming service pay. He has not otherwise exhibited a contract, wage order or other instrument, allowing him other forms of service reward and recognition under the banner of gratuity. His prayer for service/gratuity is declined.

14. *Costs to the Claimant.*

15. *Interest allowed as prayed at court rates.*

IT IS IN SUM ORDERED: -

a. It is declared that termination was unfair in both substance and procedure.

b. The Respondent shall pay to the Claimant: equivalent of 6 months' gross salary in compensation for unfair termination at Kshs. 364,788; and notice pay equivalent of 1-month salary at Kshs. 60,798 – total Kshs. 425, 586.

c. Costs to the Claimant.

d. Interest allowed at court rates as prayed.

Dated, signed and released to the Parties electronically, under Ministry of Health and Judiciary Covid-19 Guidelines, at Nyeri County, this 25th day of May 2021

James Rika

Judge