



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NO 400 OF 2018

COLLINS TEMBO.....CLAIMANT

VS

AWANAD ENTERPRISES LIMITED.....1ST RESPONDENT

HABO GROUP OF COMPANIES.....2ND RESPONDENT

JUDGMENT

Introduction

1. On 14th June 2018, the Claimant filed a claim against the Respondents, seeking compensation for unlawful termination of employment and payment of terminal dues.
2. The Respondents were duly served with the claim but they did not file any response. The matter therefore proceeded by way of formal proof.

The Claimant’s Case

3. The Claimant states that he was employed by the 1st Respondent, initially by oral agreement. He avers that he was employed in the position of Electrician, earning a monthly salary of Kshs. 16,000 effective 1st July 2012.
4. The Claimant states that the 1st Respondent was a subsidiary of the 2nd Respondent.
5. On 1st July 2012, the Claimant’s employment contract was reduced into writing.
6. The Claimant worked for the Respondents until 19th May 2017, when his employment was terminated. At the time of termination, the Claimant earned a monthly salary of Kshs. 25,000.
7. The Claimant’s case is that the termination of his employment was unjustifiable, unlawful and unfair. He therefore claims the following from the Respondents:

- a. 1 month’s salary in lieu of notice.....Kshs. 25,000.00
- b. 19 days’ pay for the month of May 2017.....19,852.94
- c. Kshs. 300 monthly savings for 58 months.....34,800.00
- d. Leave pay.....80,156.32
- e. Severance pay.....53,500.00
- f. Holiday allowance.....78,333.33

g. 12 months' salary in compensation.....300,000.00

h. Certificate of service

i. Costs plus interest

Findings and Determination

8. There are two (2) issues for determination in this case:

a. Whether the termination of the Claimant's employment was lawful and fair;

b. Whether the Claimant is entitled to the remedies sought.

The Termination

9. The Claimant's employment was terminated by letter dated 19th May 2017 stating:

"RE: TERMINATION OF YOUR EMPLOYMENT CONTRACT.

The above subject matter refers.

This is to inform you that the Management Board – Habo Group of Companies has made the decision to terminate your services as an electrician Habo Group of Companies with immediate effect. This decision has been reached based on the fact that you failed to take the instructions given to you by the CEO during his daily operational briefs.

You will receive your full pay for the month of May and another one month salary in lieu of notice.

Your final dues will be computed and remitted accordingly.

The management team thanks you for your contribution over the time you served the company and wishes you all the best in your future endeavors.

Yours faithfully,

HABO GROUP OF COMPANIES LIMITED

(signed)

Mueni Ngui

GRP HUMAN RESOURCE MANAGER"

10. The reason for termination of the Claimant's employment, as disclosed in the termination letter, was failure to take instructions given to him by the CEO.

11. The Claimant testified that on 19th May 2017, he was instructed by the CEO to install electric locks in his office. The Claimant further testified that he obtained quotations for the required items from 7 different shops, which he submitted to the Operations Manager for transmission to the CEO.

12. The Claimant told the Court that he did not receive any response from the CEO and as a result, he could not proceed with the installation.

13. The Claimant further told the Court that upon the CEO returning from Nairobi and finding that the work had not been done, the Claimant's employment was instantly terminated.

14. The Claimant went on to testify that he was not afforded an opportunity to defend himself and that the termination letter, though dated 19th May 2017, was actually served on him on 29th June 2017.

15. Section 43 of the Employment Act requires an employer to establish a valid reason for terminating the employment of an employee. This burden is discharged at the shop floor by the employer notifying the employee of the administrative charges against them and allowing them an opportunity to respond. This then is the necessary nexus between the evidential burden of Section 43 and the procedural fairness requirements of Section 41 of the Act.

16. In this case, the Claimant was not given any chance to respond to the charges against him. If he had, he would have explained his predicament regarding the assignment given to him by the CEO.

17. This was even more important as it was evident that the Claimant was a good employee. The Court draws this inference from the following recommendation issued to the Claimant on 30th May 2017:

“TO WHOM IT MAY CONCERN

RE: COLLINS TEMBO

The above named was an employee of HABO group of companies under AWANAD with as (sic) 1ST July 2012 to May 2017 as an Electrician.

Collins worked well, honestly with dedication and commitment to his work. His output was excellent and he was able to meet deadlines amidst great pressure and competing tasks. His duties were well met.

He is highly recommended to any prospective employer.

Yours faithfully,

For and on Behalf of

Habo Group of Companies Ltd.

Mueni Ngui

(signed)

Human Resource Manager.”

18. In the circumstances of this claim, which was not defended, the only conclusion to make is that the termination of the Claimant’s employment was substantively and procedurally unfair and he is entitled to compensation.

Remedies

19. I therefore award the Claimant six (6) months’ salary in compensation. In arriving at this award, I have taken into account the Claimant’s length of service and the Respondents’ unlawful and unfair conduct in terminating the employment.

20. I further award the Claimant one (1) month’s salary in lieu of notice as well as salary for 19 days worked in May 2017.

21. In the absence of leave records to the contrary, the claim for leave pay succeeds and is allowed.

22. No basis was established for the claim for severance pay and the claims for monthly savings and holiday allowance were not proved and therefore fail.

23. Finally, I enter judgment in favour of the Claimant and against the 1st and 2nd Respondents jointly and severally as follows:

a. 6 months’ salary in compensation.....	Kshs. 150,000
b. 1 month’s salary in lieu of notice.....	25,000
c. Salary for 19 days in May 2017.....	15,833
d. Leave pay for 5 years (25,000/30*21*5).....	<u>87,500</u>
Total.....	278,833

24. This amount will attract interest at court rates from the date of judgment until payment in full.

25. The Claimant is also entitled to a certificate of service plus costs of the case.

26. Orders accordingly.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY MAY 2021

LINNET NDOLO

JUDGE

ORDER

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

LINNET NDOLO

JUDGE

Appearance:

Mr. Mangale for the Claimant

No appearance for the Respondent