



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 263 OF 2017**

**RODGERS WAMBWALABA ALUKHABA.....CLAIMANT**

**v**

**ONE ACRE FUND KENYA.....RESPONDENT**

**JUDGMENT**

1. Rodgers Wambwalaba Alukhaba (the Claimant) was employed with effect from 1 November 2010 by One Acre Fund Kenya (the Respondent) as a Field Manager.
2. On or around 1 March 2017, the Respondent suspended the Claimant to enable the carrying of investigations of missing fertiliser.
3. The suspension was followed with a show-cause dated 28 March 2017 requesting the Claimant to respond to certain allegations. The Claimant responded on 30 March 2017.
4. On 4 April 2017, the Respondent held an oral hearing, and the hearing was followed with a letter dated 12 April 2017 informing the Claimant of the termination of his employment.
5. The Claimant sued the Respondent on 13 June 2017, alleging unfair termination of employment and breach of contract.
6. The Respondent filed a Response and Counterclaim through the firm of Nyikuli, Shifwoka & Co. Advocates on 1 February 2018. The Claimant filed Reply to Response and Counterclaim on 12 December 2018.
7. The Claimant's case was taken on 13 December 2018, and the Respondent's case was scheduled for 29 April 2019.
8. However, on 21 March 2019, the Court rescheduled the Respondent's case to 9 October 2019, and the Deputy Registrar was directed to notify the parties.
9. On 9 October 2019, the Respondent secured an adjournment because a witness was not available. The Court marked the adjournment as the last one to the Respondent and fixed the hearing to 16 June 2020.
10. There were 2 mentions until 1 December 2020, when the Court fixed the hearing of the Respondent's case for hearing on 2 February 2021.
11. When the Respondent's case came up on 2 February 2021, the Respondent opted to close its case without calling or leading evidence.
12. The Court then directed the parties to file and exchange submissions.

**Unfair termination of employment**

**Procedural fairness**

13. The Claimant was issued with a show-cause. It set out the allegations in contention. The Claimant was requested to make a written response.
14. The Claimant made the response, and thereafter he was invited to attend an oral hearing which he attended.

15. The Court is satisfied that the Respondent was in substantial compliance with the dictates of procedural fairness as envisaged by sections 35(1) and 41 of the Employment Act, 2007.

#### **Substantive fairness**

16. In terms of sections 43 and 45 of the Employment Act, 2007, the Respondent was expected to not only prove but prove as valid and fair the reasons for terminating the Claimant's employment.

17. The Respondent did not call any witness and/or lead any evidence to discharge the burden.

18. In the circumstances, the Court has only the interrogation of the Claimant's testimony to evaluate whether there were justifiable reasons for the termination.

19. The Court finds that the Respondent did not prove reasons or discharge the burden imposed on it.

#### **Compensation**

20. The Claimant served the Respondent for about 6 years, and factoring the length of service, the Court is of the view that the equivalent of 5-months gross salary would be appropriate (gross salary in December 2016 was Kshs 27,827/-).

#### **Breach of contract**

#### **Overtime**

21. The Claimant sought Kshs 161,147/- being unpaid extra hours.

22. During the hearing, the Claimant stated that he used to work from 6.00 am to 5.00 pm instead of 8.00 am to 5.00 pm, and thus he was working 2 hours overtime every day.

23. The Claimant produced a copy of the Respondent's Human Resources Policies and Procedures Manual, 2014.

24. The Manual provided official working hours as 0800 hours to 1700 hours Monday to Friday and Saturday 0800 hours to 1300hours.

25. The Respondent did not rebut or controvert the testimony on overtime or produce records as envisaged under section 10(3) of the Employment Act, 2007, and the Court will allow the head of the claim.

#### **Leave days**

26. The Respondent informed the Claimant in the letter of termination of employment that he would be paid accrued leave, and nothing turns on this head of the claim.

#### **Salaries March and April 2017**

27. Similarly, the Respondent offered the Claimant the salaries for March 2017 and days worked in April 2017, and the same should be paid if not already paid.

#### **Service pay**

28. The Claimant was contributing to the National Social Security Fund according to the copy of the payslip filed in Court.

29. By virtue of section 35(5) & (6) of the Employment Act, 2007, the Claimant is not entitled to service pay.

#### **House allowance underpayments**

30. The Claimant asserted he was underpaid house allowance by Kshs 94,800/-.

31. He testified that from employment to 1 January 2014, he never received a house allowance. He relied on copies of payslips.

32. The Human Policies and Procedures Manual, 2014 provided that 15% of the base salary would constitute house allowance.

33. In consideration of the provision, relief is declined.

#### **Relocation allowance**

34. The contractual or evidential foundation for this head of the claim was not disclosed.

### **Defamation**

35. The Claimant did not prove any of the ingredients for defamation.

### **Counterclaim**

36. The Respondent counterclaimed for Kshs 17,102/- for unaccounted for inputs and loans.

37. The Claimant admitted that he had an outstanding loan(s) with the Respondent, which could be offset against any awards herein.

38. If there are any outstanding loans, the Respondent may want to recover them from any monies found owing to the Claimant.

### **Conclusion and Orders**

39. The Court finds that since the Respondent did not discharge the burden expected of it by sections 43 and 45 of the Employment Act, 2007, the termination of the Claimant's contract was unfair.

40. The Claimant is awarded:

(i) Compensation Kshs 139,135/-

(ii) Overtime Kshs 161,147/-

TOTAL **Kshs 300,282/-**

41. The Claimant did not file submissions within agreed timelines. He is denied costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON 19<sup>TH</sup> DAY OF MAY 2021.**

**Radido Stephen, MCI Arb**

**Judge**

**Appearances**

For Claimant Namatsi & Co. Advocates

For Respondent Nyikuli, Shifwoka & Co. Advocates

Court Assistant Chrispo Aura