



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 24 OF 2019

EDWIN OTIENO OKECH.....CLAIMANT

v

VAGHJIYANI ENTERPRISES LTD.....RESPONDENT

JUDGMENT

1. This Cause was heard on 15 December 2020 when Edwin Otiemo Okech (the Claimant) testified and closed his case.
2. Vaghjiyani Enterprises Ltd (the Respondent) indicated that it would not call any witness, and the Court directed the parties to attempt an out of court settlement. The parties could not agree.
3. The Claimant filed his submissions on 18 February 2021 in which he identified the Issues for determination as:
 - (i) Whether the Respondent complied with the statutory conditions prescribed by the Act?
 - (ii) Whether the Claimant is entitled to remedies sought in the Memorandum of Claim?
4. The Respondent filed its submissions on 18 March 2021.
5. The Court has considered the pleadings, evidence and submissions.

Unfair termination of employment

6. In terms of section 47(5) of the Employment Act, 2007, the Claimant must at the first instance prove that an unfair termination of employment occurred before the Respondent is called upon to justify the termination of employment.
7. The Claimant's employment was terminated on account of redundancy. He testified that he was not given adequate notice and that the selection criteria of seniority, skills, ability and reliability were not considered.
8. Section 40 of the Employment Act, 2007, which guides redundancy, requires the employer to give at least one month of written notice to the employee and the local labour officer.
9. The Respondent did not give the Claimant 1-month notice. A notice was also not given to the local labour officer.
10. On that singular ground of notice, the Court finds that the termination of the Claimant's employment on 12 September 2018 was unfair.

Remedies

Severance pay

11. One of the entitlements due to an employee whose contract is terminated on account of redundancy is severance pay at the rate of 15 days for each completed year of service.
12. The Claimant was employed by the Respondent in March 2013, and the separation was in September 2018. He served 6 complete years and 7 months, and the last salary was Kshs 80,000/-. He sought Kshs 230,769/- as severance pay.

13. The Respondent did not interrogate the computation or provide alternative calculations, and the Court will allow the head of relief.

Salary in lieu of notice

14. The Claimant's contract provided for 1-month notice of termination of employment. Section 40 of the Employment Act, 2007 also provides for similar notice and not the 3-months prayed for. The Court will allow the equivalent of a 1-month salary in lieu of notice.

Accumulated leave

15. On account of leave, the Claimant sought Kshs 240,000/-.

16. Pursuant to sections 10(3) of the Employment Act, 2007, the Respondent should have set out in the termination notice the leave dues outstanding. It did not.

17. In consideration of the section and sections 10(3) & (7) and 28(4) of the Employment Act, 2007, the Court will allow the head of the claim but for the last 18 months of the contract equivalent to one and a half months' salary.

Compensation

18. The Claimant served the Respondent for about 7-years, and factoring in the length of service, the Court will award the equivalent of 5 months gross salary as compensation.

Certificate of Service

19. A certificate of service is a statutory entitlement, and the Respondent should issue one to the Claimant within 21 days.

Conclusion and Orders

20. The Court finds and declares that the termination of the Claimant's employment on account of redundancy was unfair and awards him:

(i) Severance pay Kshs 230,769/-

(ii) Pay in lieu of notice Kshs 80,000/-

(iii) Accrued leave Kshs 120,000/-

(iv) Compensation Kshs 400,000/-

TOTAL Kshs 830,769/-

21. The Respondent to issue a certificate of service within 21 days.

22. Claimant to have costs and interest on the decretal sum from the date of judgment.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 12TH DAY OF MAY 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Mr Mwesigwa instructed by Behan & Okero Advocates

For Respondent Ms Namusubo instructed by Otieno, Yogo, Ojuro & Co. Advocates

Court Assistant Chrispo Aura