



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT MOMBASA

CAUSE NO. 207 OF 2017

JONATHAN SINDO MUMBA.....CLAIMANT

VERSUS

QUALITY HOMECARE SERVICES.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 23rd July, 2021)

JUDGMENT

The claimant filed the memorandum of claim on 16.03.2017 through Kenga & Company Advocates. The claimant's case is pleaded as follows. The respondent employed him as a gardener on 01.05.2015 at Kshs.9, 400.00 per month. The respondent dismissed him on 16.06.2016 without any lawful cause of justification and the dismissal was unlawful, illegal, unprocedural and on account of purported negligence. The respondent failed to follow due procedure per statutory provisions. The claimant stated that he was entitled to:

- a) A month salary in lieu of the notice in line with sections 40(1) (f) as read with section 49(1) (a) and 50 of the Employment Act Kshs.9, 400.00.
- b) One year leave per section 40(1) of the Employment Act Kshs.7, 592.00.
- c) Severance pay per section 40(1) (g) of the Act Kshs. 5, 423.00.
- d) Payment per section 49(1) (c) of the Act at 12 months' gross salary x 9,400.00 Kshs.112, 800.00.
- e) Total Kshs.135, 215.00.

The claimant prayed for judgment against the respondent for:

- a) Payment of Kshs. 135,215.00.
- b) Interest from 10.06.2016 until payment in full.
- c) Costs of the suit.

The respondent filed on 29.08.2017 the response to the memorandum of claim through Muraya & Wachira Advocates. The respondent admitted that it employed the claimant but denied that the monthly wage was Kshs.9, 400.00. The respondent stated that the contract of service lapsed by effluxion of time. The respondent prayed that the suit be dismissed with costs.

Despite service of the hearing notice the respondent failed to attend at the hearing.

The claimant testified to support his case. The claimant closed his case without opting to file final submissions. The Court has considered all the material on record. The Court finds as follows:

- a) The respondent has admitted employing the claimant but disputes the monthly pay. The claimant's evidence was that he earned Kshs.9, 400.00 per month. The respondent failed to discharge the evidential burden of proving the terms of service per section 10(7) of the Employment Act, 2007 and the Court finds that the claimant earned Kshs.9, 400.00 per month as testified and pleaded.
- b) The Court finds that per the claimant's evidence, on 16.06.2016 the Accountant called Linnet conveyed to the claimant that the respondent's director had instructed that the claimant should no longer come to work. The Court finds that the claimant's termination

was abrupt without due procedure and as pleaded. The claimant was entitled to invoke redundancy provisions in view that no reason for his termination was given. The Court has considered that he had served for less than one year. In the circumstances he is awarded **Kshs. 9, 400.00** in lieu of notice; **Kshs. 7, 592.00** in lieu of annual leave; severance pay **Kshs.5, 423.00**; and all as prayed for and as per section 40 of the Act. The Court has considered that he had served for only one year, he desired to continue in employment; he did not contribute to his own termination in any material respect, and in absence of any mitigating factor on the part of the claimant and in consideration of the factors in section 49 of the Act, the Court finds that the claimant has established a case for the award of the 12 months' salaries in compensation. While returning as such the Court has also considered that the respondent failed to prepare the claimant and the after the abrupt termination, failed to promptly pay the redundancy dues – amounting to unlawful and therefore a strict aggravating factor. The award is for **Kshs. 112, 800.00** as prayed for.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- 1) Payment of **Kshs. 135, 215.00** by 01.09.2021 failing interest to be payable thereon at Court rates from the date of this judgment till full payment.
- 2) The respondent to pay costs of the suit.

Signed, dated and delivered by video-link and in court at **Mombasa** this **Friday 23rd July, 2021**.

BYRAM ONGAYA

JUDGE