



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 484 OF 2017

BRIAN KIMANI NGICHIRI.....CLAIMANT

VERSUS

SERVILLE INVESTMENTS LIMITED..... RESPONDENT

JUDGMENT

1. The suit was filed vide a Statement of Claim dated 6/3/2017 in which the claimant seeks the following reliefs: -

- (i) Salary in the month of January, 2016, 27,000
- (ii) One-month salary in lieu of notice – Kshs. 27,000.
- (iii) Gratuity for two years served – Kshs.54,000
- (iv) Prorata Leave not taken – 13,500.
- (v) Certificate of Service.
- (vi) General damages and/or compensation for unlawful dismissal or unlawful declaration of redundancy.

2. The suit is founded on facts set out in the Statement of Claim and witness statement of the claimant dated 6th March, 2017 which was adopted as part of the evidence in chief before Court on 8/3/2021. The claimant also produced list of documents attached to the Statement of Claim in support of his case.

3. In the uncontested evidence the claimant testified that he was employed by the respondent as a cook in July, 2014 on a contract which was later renewed. That the claimant initially earned Kshs. 15,000 per month. That on 21/9/2016 the claimant was promoted to the position of Head Chef at a salary of Kshs. 27,000.

4. That on 23/12/2016, the Managing Director at a meeting instructed the claimant to take his outstanding leave immediately without giving the claimant any reasons for the decision.

5. That on 23/1/2017 the claimant reported back to work but was not allowed to work and his attempts to reach the Managing Director for an explanation did not bear any fruit.

6. The Claimant wrote a letter of demand seeking payment of his terminal dues as set out in the claim. The claimant also sought general damages for unlawful dismissal. The letter of demand was not responded to hence the suit.

7. Despite service of summons to enter appearance and the statement of claim the respondent did not enter appearance nor file a statement of defence.

8. The evidence by the claimant remains uncontroverted and the Court finds that the claimant has proved that his summary dismissal was unlawful and unfair as it was based on no valid reason and no lawful disciplinary process was followed in effecting the summary dismissal.

9. The respondent violated sections 36, 43, and 45 of the Employment Act, 2007.

10. The claimant has proved on a balance of probability that he is owed by the respondent the terminal benefits set out in the Statement of

Claim which he was not paid upon dismissal. The claimant is also entitled to provision of Certificate of Service.

11. In terms of Section 49(1) (c) and (4) of the Employment Act 2007, the claimant is entitled to compensation for the unlawful dismissal. In this regard the claimant had served for 2 years. He had no adverse record. He had just been promoted as a Chef and lost unlawfully prospects of career growth and source of income. The claimant wished to continue working. The claimant was not given notice nor Certificate of Service to help him get alternative employment in good time. The claimant suffered loss and damage and was not paid any terminal benefits nor compensation to ameliorate his pain and loss of income.

12. Taking into account the Supreme Court decision in **Kenfright (E.A.) Limited (2018) eKLR**, and factors above, the Court awards the claimant the equivalent of four (4) months' salary in compensation for the unlawful and unfair dismissal in the sum of Kshs.27,000 x 4) 108,000.

13. In the final analysis, judgment is entered in favour of the claimant against the respondent as follows:-

(a) Compensation – Kshs. 108,000

(b) Arrear Salary for January, 2016 – Kshs. 27,000.

(c) Notice pay – Kshs. 27,000.

(d) Gratuity – Kshs. 54,000

(e) Prorata Leave – Kshs. 13,500.

Total – Kshs. 229,500.

(f) Interest at Court rates from date of judgment with regard to (a) above and from date of filing suit with regard to (b) (c) (d) and (e) above.

(g) Costs of the suit.

(h) Certificate of Service to be issued within 30 days of this judgment.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF JULY, 2021.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this judgment has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MATHEWS N. NDUMA

JUDGE

Appearance

Mr. Wachira for claimant

Ekale – Court Assistant