REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT MOMBASA

CAUSE NUMBER 235 OF 2015

BETWEEN

FERDINAND LENJO MWANGEMI .....CLAIMANT

VERSUS

MAWINGO CONSTRUCTION 2010 LIMITED .....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

IRB Mbuya & Company Advocates for the Claimant

Mutuma Gichuru & Associates, Advocates for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 17th April 2015. He states that he was employed by the Respondent as an Accountant on 23rd January 2014. He was summarily dismissed by the Respondent on 16th August 2014.

2. He earned a gross monthly salary of Kshs. 70,000. He states, he was not issued notice, or paid salary of 1 month in lieu thereof. He suspected that the Respondent got rid of him, to replace him with a 'cheaper' Accountant. He was denied terminal dues.

3. He prays for Judgment against the Respondent for: -

a. *Notice of 1 month at Kshs. 70,000.*

b. *Salary for August 2014 at Kshs. 70,000.*

c. *Accrued annual leave of 12 days at Kshs. 32,980.*

d. *Equivalent of 12 months' salary in compensation for unfair termination at Kshs. 840,000.*

e. *Punitive damage.*

f. *Certificate of Service to issue.*

g. *Costs.*

4. The Respondent filed its Statement of Response on 16th July 2015. The Response is in the nature of a general denial. This is wrapped up with a general statement that '' *termination of the Claimant was not wrongful and/ or unfair.''*

5. Hearing was scheduled for 1st October 2015. The Claimant and his Advocates were absent and the matter stood over generally. It was rescheduled for 21st March 2019. Hearing did not proceed due to inability of the Claimant's Advocates, to trace the Respondent's Advocates,

who were said to have changed office premises.

6. Hearing was rescheduled for 7th October 2019. The Respondent's Advocate were served with the Hearing Notice and acknowledged receipt, on 6th September 2019. There was no attendance on the part of the Respondent however, when the Claimant gave his evidence, and rested his case, on 7th October 2019.

7. The Claimant restated the contents of his Statement of Claim, in his oral evidence. He confirmed that he worked from 23rd January 2014 to 16th August 2014. 2 weeks before termination, his boss made unsubstantiated allegations against the Claimant [the Claimant did not clarify what these allegations were]. Termination was pre-planned. The Respondent employed Claimant's junior, paying him less than it was paying the Claimant. There was no letter to show cause before termination. There was no hearing. Salary for August 2014 was not paid to the Claimant.

The Court Finds: -

8. The evidence adduced by the Claimant is unchallenged.

9. The Respondent filed a general Statement of Response, and failed to give evidence.

10. From the evidence of the Claimant, it can be concluded that he worked for the Respondent as an Accountant, from 23rd January 2014 to 16th August 2014, when the Respondent terminated his contract of employment.

11. His gross monthly salary was Kshs. 70,000.

12. The Respondent did not establish the reason or reasons, justifying termination. There was no hearing in any form, over any accusations made against the Claimant. The Claimant suspected termination was to pave way for an Accountant whose salary was less than the Claimant earned. The Claimant has established that he was unfairly dismissed, as required by Section 47[5] of the Employment Act 2007, while the Respondent has not established the reason or reasons, for its decision.

13. The Claimant had worked for 8 months. He was on term-indefinite contract. He expected to go on working until retirement, had the Respondent not taken the adverse decision against him. His record was not shown to have blemishes. He did not contribute to the circumstances leading to termination of his contract. The Respondent has made no attempt to contest the Claim.

14. ***Compensation for unfair termination is granted at equivalent of 4 months' salary at Kshs. 280,000***.

15. ***He is granted 1-month salary in lieu of notice at Kshs. 70,000***.

16. ***Pro-rata leave is uncontested and granted at Kshs. 32,980.***

17. The facts do not establish the prayer for punitive damages.

18. He worked for 16 days in August 2014***. He is entitled to 16 days' salary, not salary for the whole of August 2014. This is granted at Kshs. 43,076.***

19. ***Certificate of Service to issue.***

20. ***Costs to the Claimant.***

IN SUM, IT IS ORDERED: -

a. Termination was unfair.

b. The Respondent shall pay to the Claimant, compensation equivalent of 4 months' salary, at Kshs. 280,000; notice at Kshs. 70,000; pro-rata annual leave at Kshs. 32,980; and salary for 16 days worked in August 2014 at Kshs. 43,076 – total Kshs. 426,056.

c. Certificate of Service to issue.

d. Costs to the Claimant.

DATED, SIGNED AND RELEASED TO THE PARTIES AT NAIROBI, UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 7TH DAY OF JULY 2021

JAMES RIKA

JUDGE