



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 100 OF 2017

IBRAHIM ALI KONGANICLAIMANT

v

MAYFAIR HOLDINGS LIMITED.....RESPONDENT

JUDGMENT

1. This Cause was heard on 5 July 2018 when Ibrahim Kongani Ali (the Claimant) testified and closed his case before the case for Mayfair Holdings Ltd (the Respondent) was scheduled for 19 December 2018.
2. On 19 December 2018, the Respondent sought and secured an adjournment.
3. There were other adjournments granted upon the request of the Respondent on 18 July 2019, 3 March 2020 and 16 December 2020.
4. Eventually, on 11 March 2021, the Respondent opted to close its case without calling any witnesses. The reason given was that the intended witness had left employment.
5. Pursuant to Court orders, the Claimant filed his submissions on 8 April 2021. The Respondent had filed its submissions on 22 March 2021.
6. The Court has considered the pleadings, evidence and submissions and will adopt the Issues as identified in the submissions.

Employment relationship

7. The Claimant pleaded that he was employed on 14 February 2014, and he produced a copy of a contract of casual employment to prove the same.
8. The Respondent produced a copy of a contract dated 12 October 2016 and asserted that is the date a contractual relationship started.
9. In light of the contract produced by the Claimant and which contract did not set the term of the contract, the Court finds that the contractual relationship started on 14 February 2014.

Unfair termination of employment

Procedural fairness

10. Section 35(1)(c) of the Employment Act, 2007 contemplates written notice of termination of employment (unless it is a case of summary dismissal – see sections 36 and 44) whilst section 41 of the Act requires the employer to hear representations from the employee before deciding to terminate the contract.
11. In cases of summary dismissal, section 41(2) of the Act makes it mandatory that an oral hearing be conducted in the presence of a colleague of the employee.
12. Although the summary dismissal letter indicated that a hearing had been held on 4 January 2017, there was no disclosure as to who was present during the session.
13. Without evidence that the Respondent complied with the dictates of section 41(2) of the Employment Act, 2007, the Court finds that the dismissal of the Claimant was procedurally unfair.

Substantive fairness

14. By dint of sections 43 and 45 of the Employment Act, 2007, it was incumbent of the Respondent to prove that the reasons for the dismissal of the Claimant were valid and fair.

15. The Respondent did not present any witness to discharge the burden, and the Court concludes that the reasons for the dismissal were not valid or fair.

Compensation

16. The Claimant served the Respondent for about 3-years, and in consideration of the length of service, the Court is of the view that the equivalent of 2-months' salary as compensation would be appropriate (gross salary was Kshs 25,621/-).

Salary in lieu of notice

17. The Respondent did not comply with the requirements of procedural fairness, and the Court will allow the equivalent of 1-month salary in lieu of notice (basic salary was Kshs 25,621/-).

Breach of contract

18. The Claimant sought Kshs 76,863/- on account of accrued leave.

19. The copy of the final dues schedule produced in Court by the Respondent indicated that the Claimant was paid accrued leave for 2016/2017.

20. The Claimant testified that he never went on leave during the 3 years of employment.

21. Section 28(4) of the Employment Act, 2007 circumscribes how much annual leave can be carried forward and because the Claimant was paid accrued leave for 2016/2017, the Court declines to allow this head of the claim.

Conclusion and Orders

22. The Court finds and declares that the summary dismissal was unfair.

23. The Claimant is awarded:

i. Compensation	Kshs 51,242/-
ii. Pay in lieu of notice	Kshs 25,621/-
TOTAL	Kshs 76,863/-

24. Claimant to have costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 1ST DAY OF JULY 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Odhiambo Ouma & Co. Advocates

For Respondent Otieno, Yogo, Ojuro & Co. Advocates

Court Assistant Chrispo Aura