



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1046 OF 2017

(Before Hon. Lady Justice Anna Ngibuini Mwaure)

BILLY KIMANI MAINA.....CLAIMANT

VERSUS

NATION MEDIA GROUP LIMITED....RESPONDENT

JUDGMENT

1. As already explained in the body of the judgment in Cause No. 1045 of 2017, this case was used as a test case for Cause No. 1046 of 2017 and Cause No. 1047 of 2017. All the parties were in agreement.

2. The Court therefore proceeded to hear and write a judgment in Cause No. 1045 of 2017. The same judgment is adopted in this cause and Cause No. 1047 of 2017. The Court considered Section 24 of the Employment and Labour Relations Court (Procedure) Rules 2016 which provides –

24. Test suit

Where two or more persons have instituted suits against the same respondents, the Court may, either on its own motion or upon the application of any of the parties with notice to all the affected parties, if satisfied that the issues to be tried in each suit are similar, make an order directing that one of the suits be tried as a test case, and staying all the steps in the other suits until the selected suit is determined, or fails to be a real trial of the issues.

3. The Court is convinced these three suits fall under the ambit stipulated in Section 24 of the said Act.

Reliefs Awarded

4. Having found the Claimant's termination was unlawful, I now award the following reliefs premised under Section 49 of the Employment Act: -

i. One month's salary in lieu of notice as per letter of appointment dated 2nd September 2008----- Kshs.54,506

ii. Salary for 23 days worked in June 2016---- Kshs.41,788

iii. House allowance is not proved for the reason that Claimant signed a contract with the Respondent from 2nd September 2008 and never raised issue of house allowance. Further the same letter of appointment states the salary was all inclusive package. Claimant has not also proved how he came to the figure of Kshs.15,000/= house allowance.

iv. I will award 6 months' salary since the Claimant had worked consistently for the Respondent for about 8 years Kshs.327,036

v. Unpaid annual leave----- Kshs.139,381

vi. The prayer for consequential loss is not awarded as the Claimant is adequately compensated for unlawful dismissal.

vii. Costs are awarded to the Claimant

viii. Interest at Court rates until payment.

Conclusion

5. The Claimant is awarded Kshs.562,711/= plus costs. Interest is also awarded at Court rates from this date till full payment but subject to statutory deductions.

6. Also certificate of Service to issue forthwith to the Claimant.

7. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 30TH DAY OF SEPTEMBER 2021

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. 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 1B 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.

ANNA NGIBUINI MWAURE

JUDGE