



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 1045 OF 2018

WILBERFORCE MUKUNA ANANGWE.....CLAIMANT

VERSUS

SIGMA FEEDS LIMITED.....RESPONDENT

JUDGMENT

1. The suit was filed on 2/6/2018 by the claimant praying for compensation for unlawful and unfair dismissal and payment of terminal benefits as follows:-

(a) One month notice pay – Kshs 12,000

(b) Unpaid leave – Kshs – 60,000

(c) Unpaid house allowance – Kshs 108,000

(d) Unpaid overtime – Kshs 540,000

(e) Service Gratuity – Kshs 36,000 and

(f) Costs and interest.

2. The respondent did not file a response to the claim nor did they attend

the hearing of the suit.

3. The claim proceeded to formal proof exparte. C.W.1 testified that he relied on a witness statement dated 18/4/2018 as his evidence in chief and produced documents in a list dated 18/4/2018 and filed on 22/6/2018.

4. The documents were marked exhibits '1' '2' and '3'.

5. The claimant testified that he was employed by the respondent on 1/7/2012 at a daily rate of Kshs 400 as a casual labourer. The claimant continued working continuously until 28th September 2017 when the supervisor Mr. Patrick Mbai informed him and others that there was no more work for casual labourers. They were informed that they would receive 3 days pay until they receive further instructions.

6. That whilst awaiting further instructions as directed, one colleague requested for the claimant's assistance. Whilst he did that one Mr. Sanghet Shah, stormed out of his office and ordered the claimant to leave the Respondent's premises. He further directed security Guards and the Supervisor to forcefully throw the claimant out of the premises.

7. On 2 /10/2017, the claimant went back to the respondent's premises to claim his final dues.

8. The claimant testified that the dismissal from work was unlawful and unfair and violated the Employment Act, 2007 and the Constitution of Kenya, 2010.

9. The claimant sent a demand letter for payment of the terminal dues but same was not heeded. The claimant stated that he got no notice of

dismissal and no valid reason for the decision. That he did not go on leave for the 5 years worked and was not paid house allowance. That he worked 12 hours a day and was not paid overtime. That he was paid Kshs.14,000 a month at the time of dismissal. That not all National Social Security Fund dues were remitted.

10. The claimant prays to be awarded as prayed.

Determination

11. The suit is not defended. The claimant was initially employed as a casual but the testimony before Court demonstrates that he had converted to a permanent and/or protected employee in terms of Section 37 of the Employment Act, 2007.

12. That the claimant's employment was terminated without notice, notice to show cause and without a disciplinary hearing in which he could get opportunity to defend himself.

13. The respondent violated sections 36, 41, 43 and 45 of the Employment Act , 2007 and the claimant who had served for 5 continuous years is entitled to compensation for the unlawful and unfair dismissal. The claimant did not contribute to the dismissal. The claimant suffered loss and damage as a result of the dismissal.

14. The Court is guided by the authority of Stanley **Mwangi Gachungu and Another -vs- Barclays Bank of Kenya Limited (2019) eKLR and Donald Odeke -vs- Fidelity Security Limited Cause No. 1998 of 2011** in the unlawful manner the claimant was treated.

15. The claimant was not paid any terminal benefits upon the summary dismissal and was not compensated for the loss suffered.

16. The Court awards the claimant the equivalent of six (6) months' salary in compensation for the unlawful dismissal in the sum of Kshs 72,000.

17. The Court finds that the claimant has proved that he is owed all the terminal benefits set out in the statement of claim limited to a period of 3 years.

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

(i) Kshs 72,000 in compensation.

(ii) Kshs 36,000 unpaid leave.

(iii) Kshs 4,800, unpaid house allowance.

(iv) Kshs 216,000 unpaid overtime.

(v) Kshs 36,000 unpaid overtime.

Total award – Kshs 424,800.

(vi) Interest at Court rates from date of judgment till payment in full.

(vii) Costs of the suit.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 14TH DAY OF OCTOBER, 2021.

MATHEWS N. NDUMA

JUDGE

Appearances

Upendo for Claimant

Ekale – Court Assistant