



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT MOMBASA

CAUSE NO. 556 OF 2017

KIPTOO HASSAN CHUMBA.....CLAIMANT

VERSUS

JAGGED ALLIANCE LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 26th November, 2021)

JUDGMENT

The claimant filed the memorandum of claim on 12.07.2017 in person. His case is that the respondent employed him as a driver on 30.05.2016 at Kshs. 28, 427.42 per month. Further, on 29.11.2016 his contract was terminated unfairly without notice and a hearing. His case was that as at termination the claimant had a grievance that the respondent had deducted his salary with Kshs. 12, 000.00 without notice and explanation. He was not paid terminal dues and the demand notice was not replied. He claimed for:

- a) One-month notice Kshs. 28, 427.00.
- b) Pay for remainder of contract duration Kshs.170, 564.52.
- c) Compensation for unfair termination Kshs. 341, 129.04.
- d) Total claim Kshs. 540, 120.98.
- e) Costs plus interest of the suit.

The respondent filed the response to the claim on 13.09.2017 through Muthee Soni & Associates Advocates. The respondent denied all averments in the memorandum of claim and prayed that the suit be dismissed with costs.

On 08.10.2018 the claimant appointed Thabit, Wampy & Kitonga Advocates to act on his behalf. Despite service of a hearing notice, the respondent failed to attend. The claimant testified to support his case. He testified that the respondent's manager verbally terminated him on 20.11.2016 when he was deducted Kshs. 12, 000.00 and no explanation was given. The claimant relied on the material on record without filing final submissions. The Court finds as follows:

1. The Court finds that the respondent employed the claimant and the exhibited pay slip confirms monthly gross pay at Kshs.28, 428.00.
2. The claimant has by his evidence established that he was terminated on account of raising a grievance about the deduction of his salary. The Court finds the termination was unfair because the reason was unfair per section 46(g) of the Employment Act, 2007 namely raising a grievance upon good foundation. The unlawful reason aggravated the unfairness. The Court has considered the further factors in section 49 of the Act. He desired to continue in employment. He had served 6 months of his 12 months fixed term contract. So he had 6 months to go. In consideration of those factors, he is awarded 4 months' compensation plus one month pay in lieu of notice (under section 35 of the Act) making **Kshs. 170, 568.00** to be paid less PAYE. The Court considers the compensation as sufficient and in absence of any factor attributable to the respondent making the claimant unable to secure alternative employment after the termination, the prayer for pay for unexpired tenure is declined as not justified at all. The claimant is entitled to the costs of the suit.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- 1) Payment of **Kshs. 179, 568.00** (less PAYE) by 24.12.2021 failing interest to be payable thereon at Court rates from the date of

this judgment until full payment.

2) The respondent to pay the claimant's costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 26TH NOVEMBER, 2021.

BYRAM ONGAYA

JUDGE