



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

ELRC CAUSE 274 OF 2017

JOSEPH MWANGI IRUNGU.....CLAIMANT

-VERSUS-

AFRIC ECO SOLUTIONS LIMITED.....RESPONDENT

JUDGMENT

1. The Claimants herein filed a Memorandum of Claim dated 10th January, 2017 on the 29th June, 2017, via the firm of Munene Chege Advocates, seeking for compensation for alleged unfair termination, payment of salary in lieu of Notice, gratuity and underpayment of wages.

2. The claimant states he was employed by the Respondent in March, 2016 as a driver earning a daily wage of Kshs 300 which pay he earned until his dismissal in August, 2016.

3. According to the claimant the money he received daily as salary was way below the statutory pay under Legal Notice number 117 of 2015, payable to a driver which ought to be Kshs. 823.10.

4. He stated that he worked from 6 am to 6pm in the evening without any break for 6 days a week therefore clocking 4 hours of overtime each day which was never paid for by the Respondent.

5. He also stated that during his tenure at the Respondent's employ, he never enjoyed his leave neither was he compensated for the same.

6. The claimant avers that he was dismissed from employment without Notice or reason thereof, which termination he considered unfair and prayed for judgment against the respondent for:-

i. A declaration that the claimant's dismissal was unlawful, unjust and discriminative and the same amounts to unfair dismissal.

ii. Payment in lieu of Notice.

iii. Compensation for unfair termination.

iv. An order compelling the Respondent to settle the outstanding benefits as enumerated at paragraph 19 of the claim

v. General damages.

vi. Costs of suit and interest thereof at court rates

vii. Any other relief that this Court may deem fit to grant.

7. The Respondent entered appearance through the firm of Mongeri and Company Advocates on the 26th July, 2017 however did not file any response to the Memorandum of claim. This suit therefore proceeded as undefended.

8. The claim herein was slated for formal proof hearing on the 23rd September, 2021, and the Respondent was served with a hearing Notice of the said date as evidenced by the Affidavit of service dated 17th September, 2021 and filed in Court on 23rd September, 2021.

9. The Claimant, **Joseph Mwangi Irungu**, during hearing sought to adopt his witness statement dated 10th January, 2017 which basically reiterated the memorandum of claim also adopted his list of documents filed on 29th June, 2017. He therefore prayed for his claim to be allowed as prayed.

10. The Claimant opted not to file any submissions in this claim.

11. I have examined the evidence and submissions of the claimant herein this claim having proceeded undefended.

12. The claimant testified that he worked for the respondent for a period of 5 months with effect from March to August 2016 and his salary was 7,000/= per month or 300/= per day. There is no evidence to controvert the above evidence. The claimant having served the respondent for over 3 months he was entitled to a written contract which was never issued.

13. I will therefore take it that he earned the 300/= daily wage as stated per Section 10(7) of the Employment Act 2007. The claimant having worked as such it is my finding that he was terminated unfairly without a hearing or without any valid reason being attached to the termination.

14. I also find that he was underpaid in terms of legal Notice 117 of 2015 which indicated that a driver was to be paid a daily wage of 744.10cents. I find for the claimant as follows:-

1. The claimant was paid 300/= daily and so was underpaid by kshs.444.10 per day and this underpayment translates to 444.10 x 3 x 21 days = 27,978.3.

2. I also find for claimant in terms of leave for 5 months at 2 ½ days leave for each month = 2.5 x 5 = 10.5 day x 744.10 = 7,813.05.

3. I also award the claimant 3 months salary as compensation for the unfair dismissal = 3 x 22,323/=

= 66,969/=

4. Claimant is also awarded 1 month salary in lieu notice

= 22,323/=

TOTAL awarded = 125,083/=

Less statutory deduction

5. The respondent will pay costs of this suit plus interest at court rates with effect from the date of this Judgment.

DATED AND DELIVERED VIRTUALLY THIS 2ND DAY OF NOVEMBER, 2021.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Daye holding brief for Chege for claimant – present

Monger & Co. Advocates for the respondents

Court Assistant - Fred