



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO.797 OF 2017**

**(Before Hon. Lady Justice Anna Ngibuini Mwaure)**

**VICTOR NGUGI.....CLAIMANT**

**VERSUS**

**AFRICABS TOURS LIMITED.....RESPONDENT**

**JUDGMENT**

**CLAIMANT'S EVIDENCE**

1. The Claimant filed a memorandum of claim dated 20<sup>th</sup> March, 2017. He states that he was employed by the Respondent as a driver from April, 2013 until 30<sup>th</sup> June, 2016.

He says his monthly salary was Kshs.14,500/=

2. He states that on the 30<sup>th</sup> June, 2016 he was whimsically denied access to the premises.

3. He says that the Respondent thereafter informed him of his decision to terminate his services with immediate effect.

4. The Claimant says he was not paid his terminal dues despite several demands to the Respondent.

5. He prays for his terminal dues as tabulated hereunder;-

(i) Payment in lieu of leave not taken for 4 years.

(ii) One month salary in lieu of notice being kshs.14,500/=

(iii) Overtime and public holidays worked.

(iv) He also demands 12 months equivalent of his monthly salary amounting to Kshs.174,000/=.

(v) He also prays for costs of this cause and interest thereon.

6. The Claimant through its process server Isaac Makau Malonza served the notice of summons and memorandum of claim on the Respondent's advocate one Isinta & Company Advocates. He explains that the said advocate confirmed he had instructions to act for the Respondent and he signed the summons and stamped.

7. The Respondent did not put a response despite being served with the summons and memorandum of claim. The matter proceeded as an undefended claim on 29<sup>th</sup> September, 2021 whereby the court ordered the Claimant to file an affidavit in support of his claim and file written submissions.

8. The same were filed and are dated 13<sup>th</sup> October, 2021 respectively.

9. The Claimant put in their submissions as directed by the court. The court took into consideration the submissions presented by the Claimant as well as the pleadings.

### **DETERMINATION**

10. The Claimant in his claim states his employment was terminated by the Respondent on 30<sup>th</sup> June, 2016 without excuse, warning or notice.

The Respondent did not file a response and so in essence did not controvert the evidence by the Claimant.

It therefore follows that the Respondent did not give a reason or even an explanation as to why or how he terminated the Respondent's employment.

11. It is established in the Employment Act 2007 and it is the law that the employment of employee cannot be terminated without a valid reason.

Section 45 (1) of the Employment Act to be specific provides that no employer shall terminate the employment of an employee unfairly.

Section 45(2) goes further to say that a termination of employment by an employer is unfair if the employer fails to prove that the reason for termination is valid.

There is no evidence at all adduced by the employer and so the evidence by the Claimant stands unchallenged.

12. In the case of **KENFREIGHT E.A. LIMITED VS BENSON K. NGUTI (2016) eKLR** the court held that an employer is duty bound to explain to an employee in the presence of another employee or a union official in a language the employee understands the reason or reasons for which the employer is considering termination of the contract.

The court held that no reason at all was given to the Respondent why his services were terminated and that he was not informed of his transgression. Neither was he given an opportunity to explain himself.

13. In this instant case the court finds in the absence of any explanation as to the reasons the Claimant's employment was terminated, his termination can only be said to have been unfair and unprocedural.

### **RELIEFS AWARDED**

14. Having found the Claimant's termination of employment was unfair, the Claimant is awarded the following awards:-

(a) 1 month salary in lieu of notice Kshs.14,500/=

(b) Unpaid leave for 4 years, Respondent did not bring records to prove otherwise Kshs.40,500/=

© overtime and public holidays worked – this is an abstract and is not proved by the Claimant and is declined.

(d) He prayed for compensation for 12 months which instead I award 4 months Kshs.58,000

Costs follow the events and so the same is awarded.

Interest is also awarded until full payment.

In conclusion the Claimant is awarded a total of Kshs.113,000/=Plus interest and costs.

Delivered, dated and signed in Nairobi this 9<sup>th</sup> day of December, 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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 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.

A signed copy will be availed to each party upon payment of court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**