



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 278 OF 2018

(Before Hon. Justice Mathews N. Nduma)

EDWARD GONDI OLIMA..... CLAIMANT

VERSUS

NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT

FUND COMMITTEE; BONDO CONSTITUENCY.....RESPONDENT

JUDGMENT

1. The suit was filed on 8th August 2018 and amended on 16th August 2018 seeking maximum compensation for unfair and unlawful dismissal and terminal benefits including:

- (a) Payment in lieu of leave days not taken for 6 years.
- (b) One month salary in lieu of notice.
- (c) Unpaid gratuity from November 2016 calculated at 31% of the gross salary for 18 months.
- (d) Leave allowance.
- (e) Costs and interest

2. The matter was not defended and the suit proceeded to formal proof on 18th March 2019. CW1 adopted his witness statement dated 8th August 2018 in which he testified that he was employed on 1st July 2013 by the respondent as a clerk of works at a monthly salary of Kshs. 46,365. That he had a letter of appointment dated 4th June 2013. That he worked diligently until his employment was terminated by a letter dated 19th June 2018 by the respondent's Account Manager.

3. That the claimant was not subjected to any disciplinary hearing and had no written warning in his record. The claimant produced exhibits '1' to '9' in support of his case. The claimant testified that he was unfairly dismissed. That he was not given leave nor paid in lieu of leave for 5 years. The claimant prays for gratuity calculated at 31% of the gross pay for the term of the contract. The claimant prays for leave allowance that would have been paid had he proceeded on leave. The claimant also prays for a certificate of service.

4. The claimant filed submissions upon close of his case.

5. The court finds that the letter of appointment given to the claimant provided for a 3 year term with effect from 1st July 2013. The contract was due to end on 30th June 2016 but the claimant continued serving the respondent for a further period of 18 months up to 19th June 2018 the date his employment was terminated.

6. The respondent did not provide a valid reason for the termination of employment in the letter dated 19th June 2018 and did not subject the claimant to any disciplinary hearing. The court finds that the termination violated the contract of employment itself and *Sections 36, 41, 43 and 45 of the Employment Act 2007*.

7. The claimant is entitled to compensation in terms of *Section 49(1) (c) and (4) of the Employment Acts*. In this regard, the claimant had almost completed his tenure of office and did not contribute to the termination of employment. He was not paid terminal benefits upon termination nor was he compensated for the job loss. The claimant suffered loss and damage. The court awards the claimant the equivalent

of one month salary in compensation for the unlawful termination in the sum of Kshs. 46,365.

Terminal benefits

(i) The court finds that the claimant is entitled to gratuity calculated at 31% of the annual basic salary for the 18 months served after the lapse of the initial contract in the sum of Kshs. 381,095.40.

(ii) The claimant has proved that he was entitled to 21 days leave for three years in the sum of Kshs. 97,335 since the rest of the leave days not taken are outside the limitation period of three years.

(iii) The claimant is also awarded one month salary in lieu of notice in the sum of Kshs. 46,365.

8. The claimant did not go on leave and is therefore not eligible for any leave allowance which is only paid to facilitate leave travel.

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

(i) Kshs. 46,365 being one month salary in compensation for unlawful dismissal.

(ii) Kshs. 381,095.40 being gratuity at 31% of basic salary for 18 months.

(iii) Kshs. 97,335 being payment of 21 days leave not taken for three years.

(iv) Kshs. 46,365 being one month salary in lieu of notice.

Total award Kshs. 571,160.

(v) Interest at court rates from date of filing suit till payment in full.

(vi) Costs of the suit.

Judgment Dated, Signed and delivered this 23rd day of January, 2020

Mathews N. Nduma

Judge

Appearances

Mr. Jaoko for claimant

M/S Mercy Muteni for respondent.

Chrispo – Court Clerk