



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 735 OF 2017

JARED NYAMWEYA MATUNA.....CLAIMANT

VERSUS

KABANSORA MILLERS LTD.....RESPONDENT

JUDGMENT

1. The Claimant instituted legal proceedings against the Respondent on 19 April 2017 and he stated the Issue in Dispute as

Unlawful, wrongful and unfair termination.

2. According to an affidavit of service filed in Court on 11 July 2017, one Mutinda, a Manager with the Respondent acknowledged service of Notice of Summons.

3. Despite the service, the Respondent did not enter appearance or file a *Response*.

4. On 1 November 2017, the Court directed that the Cause proceeds as an undefended Cause.

5. In spite of the directive, the Claimant served the Respondent with a hearing notice through registered post on 8 March 2019 after the process server was denied entry to physically serve a hearing notice.

6. The Cause was heard on 3 December 2019. The Claimant testified. He filed his submissions on 18 December 2019.

7. The Court has considered the pleadings, evidence and submissions.

Unfair termination of employment

8. The Claimant's testimony that on 21 April 2016, a supervisor of the Respondent called Mutinda sent him back home allegedly because he appeared sleepy was not controverted.

9. Equally uncontroverted was the testimony that the next day, the supervisor instructed him to go back home and wait to be recalled because there was a reduced work.

10. The Claimant reported an employment dispute to the Labour Office. The Respondent did not respond to a demand from the Labour Office.

11. On the state of the record and evidence before the Court, the Court finds that the separation between the Claimant and the Respondent was involuntary on the part of the Claimant. The separation was on account of operational requirements on the side of the Respondent.

12. The Respondent did not attend Court to prove as contemplated by sections 43 and 45 of the Employment Act, 2007 that the reduced business/operational reasons were a valid and fair reason to terminate the Claimant's employment.

13. The termination of employment was therefore unfair.

Compensation and Salary in lieu of Notice

14. The Claimant is entitled to pay in lieu of notice which head of relief is allowed (testimony that accumulated monthly wage was Kshs 26,000/- remained unchallenged).

15. Considering the Claimant served the Respondent for about 12 years, the Court is of the view that compensation equivalent to 12 months' salary would be fair.

Severance pay

16. The Court has concluded that the separation was on account of operational reasons. The Court will allow the claim for severance pay of Kshs 180,000/-.

Service pay

17. The Claimant sought Kshs 180,000/- as service pay. His evidence was that he was not registered with the National Social Security Fund. The Court will allow the claim.

Breach of contract/statute

Earned wages

18. The Claimant testified that he was not paid for days worked in April 2016. He is entitled to the earned wages.

Leave and overtime pay

19. On leave, overtime pay (including during rest days), the Claimant did not provide a sufficient evidential foundation for the Claim and relief is declined (in any case, the carrying forward of annual leave is circumscribed by section 28(4) of the Employment Act, 2007.

Underpayments/House allowance

20. The Claimant was on a daily rate.

21. Under the Regulation of Wages (General)(Amendment) Orders, a daily rate of pay includes housing allowance and therefore the relief for house allowances is declined.

Certificate of Service

22. A certificate of service is a statutory entitlement and the Respondent should issue one to the Claimant within 21 days.

Conclusion and Orders

23. The Court finds and declares that the termination of the Claimant's employment on account of operational reasons was unfair and further that there was a breach of contract/statute.

24. The Claimant is awarded

(a) Compensation	Kshs 312,000/-
(b) Pay in lieu of notice	Kshs 26,000/-
(c) Severance pay	Kshs 180,000/-
(d) Service pay	Kshs 180,000/-
(e) Earned wages	Kshs 21,000/-
TOTAL	Kshs 719,000/-

25. Respondent to issue certificate of service within 21 days.

26. Claimant to have costs on a half-scale.

Delivered, dated and signed in Nairobi on this 17th day of January 2020.

Radido Stephen

Judge

Appearances

For Claimant

Mr. Muli instructed by Muli & Co. Advocates

Respondent

did not participate

Court Assistant

Judy Maina