



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1418 OF 2015**

**(Before Hon. Justice Hellen S. Wasilwa on 15<sup>th</sup> January, 2020)**

**FRANCIS MWANGI CHEGE.....CLAIMANT**

**VERSUS**

**THE SHEPHERD CATERING LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The Claimant herein filed a Memorandum of Claim dated 14<sup>th</sup> August 2015, and filed in Court on 19<sup>th</sup> February 2016, where the Claimant states that he was wrongfully and unlawfully terminated by the Respondent herein.

2. The Claimant further states that the Respondent failed and/or ignored to pay him his salary arrears, overtime worked and terminal benefits owed to him at the time of separation.

3. The Claimant states that he was employed by the Respondent on or about November 2012 earning a monthly salary of Kshs. 13,500/-. The Claimant further averred that he performed his duties diligently and to the Respondent's satisfaction until 14<sup>th</sup> May 2015 when the Respondent unlawfully terminated him without notice.

4. Aggrieved by the Respondent's decision to unfairly terminate his services the Claimant filed the instant Claim seeking the following reliefs:-

***i. The Sum of Kshs. 294,475/=***

***ii. Costs of this suit***

***iii. Interest in (i) and (ii) above***

***iv. Any other relief as the Honourable Court may deem fit and just to award.***

5. The Respondent in its Statement of Response dated on 29<sup>th</sup> September 2015 and filed in Court on 2<sup>nd</sup> October 2015 admitted having employed the Claimant herein. It however denied that the Claimant earned a monthly salary of Kshs. 13,500 as alleged by the Claimant.

6. The Respondent further denied having unlawfully and unfairly terminated the Claimant's services as alleged. It averred that the Claimant's services were mutually terminated due to low business. It further denied owing the Claimant any terminal dues as alleged.

7. In conclusion, the Respondent urged this Honourable Court to dismiss the instant Claim with costs to the Respondent.

8. The matter was thereafter fixed for hearing on 15<sup>th</sup> October 2019, when the Claimant testified on his own behalf. The Respondent failed to attend Court despite service of the hearing notice.

**Evidence**

9. The Claimant, CW1 testified that he was employed by the Respondent as a driver from 1<sup>st</sup> November 2012 to 14<sup>th</sup> May 2015 when his services were summarily and unfairly terminated. CW1 further testified that he was subsequently engaged by the Respondent albeit shortly

from 15<sup>th</sup> May 2015 to 29<sup>th</sup> May 2015 upon the Respondent's request.

10. CW1 averred that during the subsistence of his employment relationship with the Respondent herein he earned a monthly salary of Kshs. 13,500/- and a house allowance of Kshs. 6,000/- bringing the total to Kshs. 19,500/-.

11. CW1 urged this Honourable Court to allow his Claim in terms of the reliefs sought therein.

### **Claimant's Submissions**

12. It is submitted by the Claimant that his summary dismissal from the Respondent's employment was irregular and unlawful since there was no probable cause for his dismissal and no notice was issued prior to his dismissal contrary to the provisions of Section 44 of the Employment Act. The Claimant therefore urged this Honourable Court to find that the Respondent's actions were irregular and unfair and proceed to award his Claim as prayed.

13. On the issue of salary arrears and house allowance, the Claimant submitted that upon his appointment the Respondent was paying his salary of Kshs. 13,500/- with an additional Kshs. 6,000/- as house allowance. He however submitted that the Respondent for unknown reasons and in complete contravention to the provisions of Section 17 (1) of the Employment Act and his employment contract paid him a salary of Kshs. 12,000/- on cash payroll. It is on this basis that the Claimant urged this Honourable Court to allow the same.

14. On overtime worked, the Claimant submitted that he is entitled to the same having worked overtime over the period of his engagement with the Respondent.

15. The Claimant further contended that he is entitled to three (3) months' salary in lieu of notice by dint of Section 36 of the Employment Act, 2007 and his employment contract that requires the same. The Claimant urged this Honourable Court to award the same.

16. The Claimant further submitted that he is also entitled to payment of special duty allowances of Kshs. 10,000/- which amount was agreed between the parties for extra services rendered such as being an accountant for the pastors as well as being assigned extra work by the Respondent's company Lenana Haus Limited which tasks continued until 29<sup>th</sup> May 2015. He therefore urged this Court to allow this relief.

17. In conclusion, the Claimant submitted that the Respondent being in breach of the Contract of Service, it is liable to pay damages for wrongful summary dismissal. The Claimant further urged this Honourable Court to allow his Claim as prayed.

18. I have considered evidence of the Claimant herein plus submissions filed this matter having proceeded exparte. I note that the Claimant established that he had been employed by the Respondent herein as evidenced from his payslip and NSSF statement.

19. From the payslip for February 2015, his gross pay was 19,500/=. There is no indication as to how and why the employment relationship was terminated save for the evidence adduced by the Claimant which show that the Claimant was terminated for no apparent reason. The evidence of the Claimant remained uncontroverted.

20. I therefore find that the Claimant has established his case and I find for him and award him as follows:-

***1. 1 month salary in lieu of notice = 19,500/=***

***2. 10 months' salary as compensation for unlawful termination = 19,500 x 10 = 195,000/=***

**TOTAL = 214,500/=**

***less statutory deductions***

***3. The Respondent will pay costs of this suit plus interest at Court rates with effect from the date of this judgement.***

**Dated and delivered in open Court this 15<sup>th</sup> day of January, 2020.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Claimant in person – Present

Respondents – Absent