



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1778 OF 2015

GEORGE MORARA MOKONO.....CLAIMANT

VERSUS

MILLS INDUSTRIES LIMITED.....RESPONDENT

JUDGMENT

1. George Morara Mokono (Claimant) was employed by Mills Industries Ltd (Respondent) as a tailor on 6 June 2008.
2. Sometime in 2011, the Claimant was elected as a shop steward and the Tailors & Textile Workers Union duly notified the Respondent on 22 August 2011.
3. Around September 2014, the Respondent decided to declare certain positions redundant, and when the Union got wind of the decision, it wrote to the Respondent on 1 September 2014 to contest the action as illegal.
4. On 12 September 2014, the Respondent wrote to the Claimant to notify him about the termination of his contract and the reason given was *low business and stiff competition in the textile and tailoring industry*. The termination was to take effect the next day.
5. The notice was copied to the Union and the Labour Officer, Industrial Area.
6. On 13 September 2014, the Claimant was paid his dues which included notice pay, accrued leave and earned wages.
7. The Claimant was not satisfied and he consulted *Kituo Cha Sheria* which wrote a demand to the Respondent on 12 November 2014 alleging breach of contract/statute and unfair termination of employment.
8. On 5 October 2015, the Claimant instituted these legal proceedings and the Respondent filed a *Reply to Statement of Claim* on 9 May 2016 denying unfair termination of employment or breach of contract/statute.
9. The Court gave pre-trial directions on 4 July 2019 and the Cause was heard on 9 December 2019.
10. Although the Respondent's advocate on record, Gichuki Kingara & Co. Advocates accepted service of hearing notice on 6 September 2019, there was no appearance/representation for the Respondent.
11. The Claimant filed his submissions on 16 January 2020 (should have been filed by 28 December 2019).
12. The Court has considered the pleadings, evidence and submissions.

Unfair termination of employment

Procedural fairness

13. The Respondent terminated the Claimant's employment on account of redundancy.
14. In terms of section 40(1) of the Employment Act, 2007, the Respondent should have given 1-month written notice to the Claimant and/or his Union.
15. The Claimant acknowledged in his witness statement which was adopted in Court that the Respondent issued notices on 11 August 2014 and that the letter of termination was issued on 12 September 2014.

16. The Court finds that appropriate notice was issued.

17. Apart from the notice, the Respondent was under a duty to pay the Claimant *severance pay*. The schedule of final dues does not indicate payment *severance pay*.

18. On the state of the record, the Court finds that the termination of the Claimant's employment on account of redundancy was procedurally unfair as *severance pay* was not paid.

Substantive fairness

19. Under sections 43 and 45(2)(b)(ii) of the Employment Act, 2007, the Respondent had the burden of proving the existence of valid operational requirements for the redundancy.

20. The burden was not discharged as the Respondent and its advocate did not attend the hearing.

Compensation and salary in lieu of notice

21. The Claimant served the Respondent for about 5 years, and in consideration of the length of service, the Court is of the view that the equivalent of 5 months gross wages would be appropriate.

22. The Respondent paid the Claimant 2 weeks salary in lieu of notice instead of 1-month salary in lieu of notice as required by section 40(1)(f) of the Employment Act, 2007.

23. The Court finds the Claimant is entitled to the balance.

Breach of contract/statute

Salary for September 2014

24. The Claimant's final dues included Kshs 5,661/- being wages for days worked in September 2014 and nothing terms on this claim.

Service gratuity

25. Service gratuity was among the dues paid to and acknowledged by the Claimant and it would be unconscionable to allow this head of the claim.

Accrued leave

26. The Claimant was paid Kshs 34,035/- on account of accrued leave.

27. Before the Court, the Claimant sought Kshs 99,617/- for untaken leave during the 5 years of service.

28. The Claimant did not lay any evidential foundation for this head of the claim. Relief is declined.

Underpayments

29. The Claimant contended that the Respondent paid him wages below prescribed minimum wages from May 2010 up to September 2014, and he quantified the underpayments as totalling Kshs 110,803/-.

30. The Court has looked at the relevant *Regulation of Wages Orders* in place during the time, and considering the same, and that the Claimant's testimony was not challenged or rebutted agrees with the Claimant that he was underpaid.

House allowance

31. The monthly prescribed minimum wage does not include housing and by dint of section 31 of the Employment Act, 2007, the Court will allow the head of the claim for house allowance in the sum of Kshs 121,500/-.

Conclusion and Orders

32. The Court finds and holds that the termination of the Claimant's employment on account of operational reasons was unfair.

33. The Claimant is awarded

(a) Compensation Kshs 83,010/-

(b) Balance notice pay	Kshs 6,750/-
(c) Underpayments	Kshs 110,803/-
(d) House allowance	Kshs 121,500/-
TOTAL	Kshs 322,063/-

34. Claimant to have costs.

Delivered, dated and signed in Nairobi on this 28th day of February 2020.

Radido Stephen

Judge

Appearance

For Claimant Mr. Mukeli instructed by Namada & Co. Advocates

For Respondent Gichuki Kingara & Co. Advocates

Court Assistant Judy Maina