



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1829 OF 2015

(Before Hon. Lady Justice Maureen Onyango)

DANIEL NYANGUI MUTUTA.....CLAIMANT

VERSUS

LG HARRIS COMPANY (E.A) LIMITED...RESPONDENT

JUDGMENT

By memorandum of claim dated 12th and filed on 15th October 2015, the claimant avers that he was employed by the respondent in January 2014 and was dismissed in July 2015. He avers that the dismissal which was on accusation of stealing was unfair because there was no proof of the theft. He further avers that the respondent asked him to pay the value of the lost goods in the sum of Kshs.7,000/= which he reluctantly did only because he wanted to retain his job. The respondent however reneged on its promise and dismissed him without complying with the procedural requirements set out in the Employment Act.

Aggrieved by the unfair termination, the claimant moved to court. In his memorandum of claim he prays for the following orders –

- a. A declaration that the termination was unlawful, untimely.
- b. An orders that the respondent pay the claimant his dues and benefits of Kshs.288,110/= as below –
 1. Salary for the month of July 2015. Kshs.20,579.35
 2. Salary in lieu of notice..... Kshs.20,579.35
 3. Compensation Kshs.246,952.20
- c. An order that the respondent issue the claimant with a certificate of service.
- d. Costs of the claim and interest
- e. Such further order and relief the court shall deem fit and appropriate.

The respondent filed a memorandum in reply to the memorandum of claim on 19th January 2016 in which it pleads that the claimant's summary dismissal was fair and lawful and for valid reason following the claimant's failure to obey the lawful instructions of the respondent and for stealing from the respondent.

When the case came up for hearing on 4th November 2019 the parties drew the court's attention to a decision of this court in Cause No. 1827 of 2015 which was delivered on 31st May 2019 in a case whose facts are on all fours with the instant claim. They urged that the court adopts the said decision in this claim.

The parties agreed to file submissions and attach a copy of the judgment in 1827 of 2015.

Determination

I have considered the judgment in Cause No. 1827 of 2015 and confirm that the claimant therein was dismissed from employment on similar facts as the claimant herein. In the said claim the court determined that the claimant's employment was terminated verbally, without justifiable cause in violation of due procedure and awarded the claimant 6 months' salary as compensation and one month's salary in lieu of notice.

In the instant claim the claimant prays for salary for July 2015, in the sum of Kshs.20,579.35, one month's salary in lieu of notice and 6 months' compensation.

The parties having agreed to adopt the award in Cause 1827 of 2015, I award the claimant the following –

- i. 6 months' salary a compensation in the sum of..... Kshs.108,660
- ii. One month's salary in lieu of notice..... Kshs.18,110

Total Kshs.126,770

The prayer for salary for the month of July 2015 is rejected as in Cause No. 1827/2015 the court found that the same had been paid. Since the claimant in this claim was dismissed under similar circumstances, I find that he was paid salary for the month of July 2015.

Although the claimant had stated that his salary was Kshs.20,579.35, I have confirmed from the payslip attached to the memorandum of claim that this was inclusive of overtime. The basic salary was Kshs.16,610 with house allowance of Kshs.2,500 per month. I have thus used the consolidated pay of Kshs.18,110 for purposes of the tabulation of the award.

I thus enter judgment for the claimant against the respondent in the total sum of Kshs.126,770/=.

The respondent will pay the claimant's costs of this suit and interest shall accrue from date of judgment.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 21ST DAY OF FEBRUARY 2020

MAUREEN ONYANGO

JUDGE