



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1793 OF 2015

IRVINE GITARI JOSPHAT.....CLAIMANT

VERSUS

EQUATORIAL NUT PROCESSORS LTD.....RESPONDENT

JUDGMENT

1. Irvine Gitari Josphat (Claimant) instituted these proceedings against Equatorial Nut Processors Ltd (Respondent) on 8 October 2015 alleging unfair termination of employment and breach of contract.
2. The Respondent filed a *Reply to Claim* on 5 November 2015.
3. When the Cause came up for hearing on 10 February 2020, the Respondent and its advocate were absent.
4. On record was an affidavit of service filed in Court on 10 February 2020 attesting to service and acknowledgement of a hearing notice by the Respondent's advocate on 3 December 2019.
5. The Court being satisfied with the service allowed the hearing to proceed.
6. The Claimant testified but his submissions were not on file by the agreed date of 28 February 2020.
7. The Court has considered the pleadings and evidence on record.

Unfair termination of employment

8. The Claimant was employed by the Respondent as a Senior Purchasing Officer on 20 April 2014. He testified that around 18 March 2015 he fell ill (he produced a copy of medical treatment record dated 19 March 2015).
9. According to the Claimant, on 26 April 2015, he was invited to a meeting where he found the Respondent's Chairman and Operations Director and that they told him they did not want to see him in the office.
10. The Claimant stated that he took the instruction as a dismissal, and asserted that it was unfair because he was not given notice of termination of employment.
11. The Respondent had in paragraph 7 of the *Reply to Claim* pleaded that the termination of the Claimant's employment was for valid and fair reasons but did not attend Court to discharge the burden placed on it by sections 43 and 45(1) of the Employment Act, 2007.
12. Section 35(1) of the Employment Act, 2007 contemplates *written notice of termination of employment*, and with the Claimant's un rebutted testimony that none was given, the Court finds that the Claimant discharged the onus placed on him by section 47(5) of the Act to demonstrate that there was unfair termination of employment.

Compensation

13. The Claimant served the Respondent for about 2 years, and in consideration of the length of service, the Court is of the view that the equivalent of 3-months' salary as compensation would be fair (gross salary was Kshs 40,000/-).

Pay in lieu of notice

14. Since the Respondent did not give the Claimant written notice as envisaged by section 35(1)(c) of the Employment Act, 2007, the Court will allow the claim for 1-month salary in lieu of notice.

Breach of contract

15. The Claimant contended that the Respondent deducted but did not remit statutory dues to the National Social Security Fund and National Hospital Insurance Fund.

16. The Claimant did not produce any account statements from the two Funds, and the Court finds that these heads of the Claim were not proved to the required standard.

Conclusion and Orders

17. From the foregoing, the Court finds and declares that the termination of the Claimant's employment was unfair and awards him

(a) Compensation Kshs 120,000/-

(b) Pay in lieu of notice Kshs 40,000/-

TOTAL Kshs 160,000/-

18. The Claimant is denied costs for not filing submissions within agreed timelines.

Dated, signed and delivered through email in Nairobi on this 24th day of April 2020.

Radido Stephen

Judge

Appearances

For Claimant Mr. Njagi instructed by Mwenda Njagi & Co. Advocates

For Respondent C.N. Kihara & Co. Advocates

Court Assistant Judy Maina