



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT AT NAIROBI

CAUSE NO.1901 OF 2016

(Before Hon. Justice Hellen S. Wasilwa on 21st May, 2020)

EMMANUEL SABWA.....CLAIMANT

VERSUS

HABO GROUP OF COMPANIES LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant instituted this suit on 14/9/2016, challenging the termination of his employment and sought the following reliefs from this Court:-

- a. Pay for days worked but not paid in March 2016 in the sum of KShs. 13,333.33.*
- b. One months' salary in lieu of notice in the sum of KShs. 100,000.00.*
- c. Leave earned but not taken $(100,000/30 \times 21 \times 2 \text{ years})$ amounting to KShs. 140,000.00.*
- d. House allowance for 2 years and 2 months $(100,000 \times 15\% \times 12 \times 2.2 \text{ years})$ amounting to KShs. 396,000.00.*
- e. In house savings with full benefits for (25 months at KShs. 300.00 a month $\times 2$) amounting to KShs. 15,000.00.*
- f. Pension savings with full benefits for (25 months at KShs. 300.00 a month $\times 2$) amounting to KShs. 7,500.00.*
- g. Compensation for unfair termination equivalent to 12 months' gross pay $(KShs. 100,000 \times 12)$ amounting to KShs. 1,200,000.00.*
- h. An order to compel the Respondent to fully remit the Claimant's statutory deductions up until the Claimant's date of termination to wit: PAYE, NHIF contributions and NSSF contributions.*
- i. Certificate of service.*
- j. Costs and interest of this suit.*
- k. Any other relief as the court may deem just to grant.*

2. The Respondent neither entered appearance nor filed a response to the claim.

The Claimant's Case

3. The Claimant avers that he was employed by the Respondent as an accountant on 17/1/2014, on probationary terms. His employment was later confirmed on 1/8/2014 but his designation changed to a Procurement Assistant for Trade and Hospitality.

4. He avers that his starting gross monthly salary was Kshs. 30,000.00 which gradually increased to Kshs. 100,000.00. However, the same was not commensurate to his responsibilities and any plea to match his salary to his responsibilities did not illicit any response.

5. He avers that he served the Respondent diligently and with utmost professionalism and rose through the ranks to be the Respondent's risk stock controller.
6. It is averred that on 8/2/2016, the Claimant was issued with a letter requiring him to show cause within 24 hours for his alleged insubordination and gross negligence of duties. He was also accused of failing to reconcile sales receipts and banking reports. He responded to the letter on 9/2/2016 explaining that reconciling sales receipts and bank reports were not his duties. He also offered solutions on how to avert these problems and requested to make an oral presentation of his case before any action could be taken.
7. The Claimant avers that on 13/2/2016, he was transferred to another working station and his designation changed from Risk Stock Controller to Accountant. It is his position that this was done unprocedurally and without consulting him.
8. It is averred that on 20/2/2016, he was issued with a suspension letter sending him on suspension to allow the disciplinary committee to finalize the verdict of his case. It is his position that he was never summoned to appear before the committee or any other forum.
9. Subsequently, the Claimant was issued with a dismissal letter on 2/3/2016. It is his position that his summary dismissal was unlawful.
10. He avers that the Respondent attempted to coerce him into signing an acceptance for terminal dues that had not been properly calculated. He further avers that he realized that his PAYE, NHIF and NSSF contributions were never fully remitted though they had been deducted.
11. During trial, the Claimant testified as CW1. He sought to rely on his witness statement filed on 14/9/2016 as his testimony and the bundle of documents filed on even date, as his evidence. The witness statement reiterates the averments contained in the statement of claim as outlined hereinabove.
12. The Respondent did not cross examine the Claimant nor did it present any witness.

The Claimant's Submissions

13. In his submissions filed on 5/2/2020, the Claimant submits that the termination of his employment was unlawful. It is his position that the period within which he was required to show cause was unreasonably short and was intended to cause his dismissal.
14. Further, he was abruptly transferred to another workstation without being consulted while his disciplinary case was still ongoing. He was then sent on suspension to pave way for finalization of his verdict, without him being afforded a hearing. Lastly, he was summarily dismissed without being given the opportunity to defend the allegations raised against him despite requesting for an opportunity to make his oral presentations.
15. The Claimant relies on the cases of **Mary Chemweno Kiptui vs. Kenya Pipeline Company Limited [2014] eKLR** and **John Nganga Ngigi & Another vs. Nairobi Hospital [2016] eKLR** where the respective courts held that an employee must be taken through a fair procedure before their termination can be deemed as fair.
16. As regards the reliefs sought, the Claimant submits that he is entitled to the same. In particular, he submits that he is entitled to pay for the 8 days worked but not paid, in-house savings with full benefits and pension savings with full benefits because the same were acknowledged in his dismissal letter. He further submits that he is entitled to notice pay by dint of Section 36 of the Employment Act.
17. It is submitted that he is entitled to the claim for the leave days earned but not taken, pursuant to Section 28 1 (b) of the Act. It is also submitted that under Section 74 (1) (i) of the Act, the Respondent was required to provide him with housing or pay house allowance, hence he is entitled to the claim for house allowance as prayed.
18. The Claimant submits that having established that his termination was unfair, he is entitled to compensation for unfair termination pursuant to Section 49 (1) (c). He also urged to be granted a certificate of service and for the Respondent to be compelled to fully remit his statutory deductions which had not been made at the time of termination.
19. I have examined the evidence and submissions of the Claimant herein this case having proceeded exparte on Former Proof.
20. The Claimant gave evidence and established that he was an employee of the Respondent from 17.1.2014 to 20.2.2016 when he was dismissed. The Respondent though served, had never entered any appearance.
21. From the Claimant's evidence, he was dismissed without being given an opportunity to defend himself. This evidence remained uncontroverted and I find that indeed the Claimant was dismissed unfairly and unjustly contrary to what is envisaged under Section 45 (2) of Employment Act 2007.
22. I find for the Claimant as prayed in his Claim and I award him as follows:-

1. 1 months' salary in lieu of notice = Kshs.100,000/=

2. House allowance not paid for the period worked with effect from September 2014 to 20th February 2016 = 18 months. There is no indication that he was paid house allowance and the contract letter did not mention that the basic pay will include house allowance = $15/100 \times 100,000 \times 18 = 270,000/=$

3. Prorated leave not taken = 18 months x 2.5 days of 100,000 = $45/30 \times 100,000 = 150,000/=$

4. In house savings for 25 months as per the letter of contract = 300/= per month x 2 x 25 = 15,000/=

5. Pension savings with full benefits for 25 months at 300/= per month x 2 = 7,500/=

6. 8 months' salary as compensation for unfair termination = 8 x 100,000 = 800,000/=

TOTAL = 1,342,500/=

Less statutory deductions

7. The Respondents are hereby also directed to remit any unremitted NHIF and NSSF deductions made.

8. The Claimant be issued with a Certificate of Service.

9. The Respondent will pay costs of this suit plus interest at Court rates with effect from the date of this judgment.

Dated and delivered in Chambers via zoom this 21st day of May, 2020.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Ngugi Kariuki for Claimant – Present

Respondent – Absent