



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 169 OF 2018

(Before Hon. Justice Mathews N. Nduma)

PETER MOROSWA MAROA.....CLAIMANT/APPLICANT

VERSUS

ALPHAJIRI LIMITED.....RESPONDENT

JUDGMENT

1. The claimant filed the suit on 20th April 2018 praying for :-

- a. Kshs. 388,200 being the salary for 9 months fixed contract.
- b. Kshs. 4,500 being bicycle and sim card allowance.
- c. Costs and interest.

2. The respondent filed a response to the memorandum of claim on 7th May 2018 in which the respondent admits that the claimant was engaged by the respondent on 23rd June 2017 together with a team of other field officers, but states that the field officers were employed on casual basis and denies all the particulars of claim.

3. CW1, the claimant testified under oath that he was appointed in the position of field officer by the respondent by a letter of appointment dated 23rd June 2017. That the employment was for a fixed term on nine (9) months due to end on 31st March 2018. That he was to be paid Ksh. 45,000 per month. That he was given a bicycle to travel with and was to be paid Kshs. 300 for transport per day and Kshs. 200 per day for airtime per day.

4. That he worked for only one month and was sacked without any reason given for the termination. That he did not receive any salary at all but was only paid Kshs. 16,800 as deposit for the bicycle which he was to own after the contract expired.

5. That the claimant wrote a letter of demand to the claimants dated 20th February 2018 and the same was responded to by the respondent denying liability. The letter of demand and the response were produced as exhibits by CW1. The claimant states that the termination of his employment was unlawful and unfair and prays to be awarded as set out in the statement of claim.

6. The respondent was represented at the hearing of the case by Mr. Okoth advocate who cross examined CW1 at length on 19/3/2019. The matter was then adjourned to the 9/10/2019 for defence hearing.

7. On 9/10/2019, Mr. Bagada appeared for the respondent and sought further adjournment of the case. The application for adjournment was opposed by Mr. Marwa for the claimant.

8. The court dismissed the application for adjournment on the grounds that it was already six (6) months from the day the claimant's case was closed and the parties were allocated the hearing date by consent of the parties. The court ruled that the defence hearing was to proceed as scheduled.

9. Mr. Bagada for the respondent then closed the defence case and the court gave directions for filing of final submissions. The claimant filed written submissions on 13/11/2019 but the respondent filed none.

Determination

10. The issue for determination is whether the claimant has proved his case on a balance of probabilities. The testimony by the claimant is un-contradicted that he was employed on a nine (9) month fixed contract at a monthly salary of Kshs. 45,000 in the position of a field officer/Manager of the team. The claimant worked from 23rd June 2017 and his employment was terminated without giving any reason after working for only one month. The court is satisfied that indeed the claimant served the respondent for one month and was not paid any salary for the service rendered.

11. The court is satisfied that the claimant only received kshs. 16,800 being a deposit for a bicycle he was using in his field duties. The court finds that the respondent unlawfully and unfairly breached and terminated the 9 month fixed contract after only one month of service.

12. The court finds that the claimant has proved his case on a balance of probabilities and is entitled to the following reliefs:-

- a. One month salary in lieu of termination notice in the sum of Kshs. 45,000.
- b. Kshs. 45,000 being one month salary for the period served.
- c. The claimant is entitled to compensation for the unlawful and unfair termination of employment in terms of section 49 (1) (c) and 4 of the Employment Act, 2007. The compensation cannot be equivalent to the full salary for the unserved 9 months contract that was unlawfully breached and terminated by the respondent.
- d. However, the claimant suffered loss and damage for the sudden loss of employment without notice and for no reason assigned. The claimant did not contribute to the termination. The claimant was not paid earned salary and terminal benefits upon termination. The claimant was not compensated for the job loss. The claimant lost prospects of career advancement with the respondent. The court awards the claimant the equivalent of one (1) month salary as compensation for the unlawful and unfair termination of employment in the sum of Kshs. 45,000.

13. In the final analysis Judgment is entered in favour of the claimant against the respondent as follows:-

- a. Kshs. 45,000 being unpaid one month salary.
 - b. Kshs. 45,000 being one month salary in lieu of notice.
 - c. Kshs. 45,000 being the equivalent of one month salary as compensation for the unlawful and unfair termination of employment.
- Total award Kshs. 135,000.
- d. Interest at court rates from date of Judgment till payment in full.
 - e. Costs of the suit.

Ruling Dated, Signed and Delivered at Nairobi this 16th day of July 2020.

Mathew N. Nduma

Judge

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

Mathews N. Nduma

Judge

Appearances:-

Mr. Kimaro for the Claimant

Mr. Okoth for the Respondent.

Chrispo: Court Clerk