



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT ELDORET**

**CAUSE NO. 11 OF 2017**

**ZEDEKIAH AMAKOBE WERE.....CLAIMANT**

**AND**

**ELDOMATT SUPERMARKET....RESPONDENT**

**JUDGEMENT**

1. The claimant herein averred that he was through an oral contract employed by the respondent as a shop attendant at a basic salary of Kshs 13,500 per month. He served the respondent dedicatedly without any warning in his employment records until 4<sup>th</sup> August, 2014 when according to him his service was terminated without any lawful justification. According to the claimant, the respondent terminated his service on the allegation that the claimant was planning a strike. The particulars of the allegations were never availed to him. Upon termination the respondent never paid his terminal dues.
2. In response to the claim, the respondent generally denied the claimants averment and stated that the termination of the claimant service was for a lawful cause and lawful procedure was followed.
3. At the oral hearing the claimant adopted his statement recorded on 29<sup>th</sup> March, 2018 as his evidence. According to him his boss called him and he had a letter which he alleged the claimant wrote calling for a strike he denied writing the letter. He was dismissed thereafter. Concerning working hours it was his evidence that he used to report to work at 7 am and work until 8pm. He only had one off day a month. He never proceeded on leave.
4. In cross-examination he said he was paid in cash and the respondent kept all the records. He further stated that in June and July 2013 he was at work but did not have anything in writing to show on 1<sup>st</sup> August, 2014 he was away unwell. He reported back on 4<sup>th</sup> August, 2014. He was paid upto July 2014. He gave his employer a letter to show he was away due to sickness. He maintained that he was dismissed on the allegation that he was planning a strike. He denied that the discharge voucher was his.
5. The respondent's witness Mr Jaideep Shah informed the court that he was a director of the respondent and sought reliance on his witness statement recorded on 10<sup>th</sup> October, 2017.
6. According to him the claimant absconded duties in July 2014 and later showed up on 4<sup>th</sup> August, 2014. His services were terminated when he came back. He was given a hearing but could not explain where he was. He could only account for three days which he said he was sick. The claimant was paid all his terminal dues upon termination. The claimant only signed a discharge voucher. He denied the voucher was forged. The claimant's signature was similar to one on the appointment letter. It was his evidence that the claimant never applied for leave of absence.
7. In cross-examination he stated that the claimant disappeared from work for a week. They did not however report the absence to Ministry of Labour. He stated that he did not have the minutes of the meeting where the claimant was called and further that he did not have a show cause letter. It was further his evidence that the claimant was paid Kshs 13,500 in full and final settlement.
8. The respondent herein averred that the claimant was terminated for absconding work for four days towards the end of July. The claimant on the other had claimed he was dismissed on the allegation that he had planned a strike. The claimant however made no allegation whether he was a union official or a shop steward. Therefore, it was not clear in what capacity he was accused of planning in strike. The claimant further claimed he was unwell for about four days in July 2014. He however did not produce in evidence any medical report or treatment notes to show that he was unwell and that the nature of the illness prevented him from coming to work.

9. To this extent it was not clear to the court under what circumstances the parties separated. Whereas the burden of proof of allegation of absconding duty is on the employer, the claimant by his own admission states he was away sick yet did not produce either to his employer or to the court any medical report or treatment notes to support his allegations that he was prevented from being at work for reasons of illness. The court will therefore not make a finding on the claim for unfair termination as no sufficient evidence had been presented to court to support the claim.

10. Concerning overtime the claimant did not adduce any or credible evidence to support his allegations on working overtime. In any event the payslip produced by the respondent to which the claimant never objected to when it was filed by the respondent showed overtime was included in the monthly pay whenever worked. The claimant was therefore required to be specific on which months he worked overtime. This head of claim is therefore rejected.

11. The claim for rest days leave dues and public holidays worked were not resisted by the respondent hence would be allowed.

12. In conclusion the court will deem the separation between the claimant as a normal termination of employment and award the claimant as follows:

a. One month's salary in lieu of notices	13,500	
b. Rest days	64,800	
c. Leave dues	13,500	
d. Public holidays worked	9,450	
		101,250
e. Less paid	13,500	
		87,750

13. There will be no order as to costs. The award shall where applicable be subject to taxes and statutory deductions.

**Dated at Nairobi this 23rd day of October, 2020**

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 23rd day of October, 2020**

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....**for the Claimant and**

.....**for the Respondent.**

**Abuodha J. N.**

**Judge**