



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 760 OF 2016

PAUL MBUYA JAKOYO.....CLAIMANT

VERSUS

HORIZON CONTACT CENTRES LTD.....RESPONDENT

JUDGMENT

1. Paul Mbuya Jakoyo (Claimant) instituted these legal proceedings against Horizon Contact Centres Ltd (Respondent) on 5 May 2016 and he stated the Issues in Dispute as Whether the Respondent verbally terminated the Claimant's employment contract without giving any notice or justifiable reasons or payment in lieu thereof.
2. Despite filing a Memorandum of Appearance on 21 July 2017, through the firm of Gitonga Kinyanjui & Co. Advocates, the Respondent did not file a Response.
3. When the Cause came up on 3 July 2020 for directions, the Court directed the Claimant to file an affidavit containing his evidence and submissions.
4. The same were filed on 20 July 2020.
5. The Court has considered the affidavit and submissions.
6. The Claimant was employed by the Respondent as a Customer Care Representative on 1 January 2015 at a salary of Kshs 19,000/- (copy of pay slip was filed).
7. According to the Claimant, the Respondent gave him leave in October 2015 to go attend to his sick father but he succumbed to illness forcing him (Claimant) to request for permission to extend the leave. The permission was granted.
8. The Claimant asserted that when he resumed duty, he was informed that his employment had been terminated though no reasons were given.
9. The Claimant's case remained uncontroverted and the Court has no hesitation in finding that the Respondent decision was in breach of sections 35(1)(c) and 41 of the Employment Act, 2007. The decision was procedurally unfair.
10. In terms of sections 43 and 45 of the Act, it was incumbent upon the Respondent to prove the reasons for terminating the Claimant's contract. The Respondent snubbed the opportunity to discharge the burden and the Court can therefore conclude that the decision was not for valid or fair reasons.

Compensation and Salary in lieu of notice

11. For the failure to issue a written notice of termination of employment, the Court awards the Claimant the equivalent of 1-month salary in lieu of notice.
12. And for the unfair termination of employment and considering that the Claimant had served for about only 10 months, the Court awards the equivalent of 2-months' salary as compensation.

Certificate of Service

13. A certificate of service is a statutory entitlement and the Respondent should issue one to the Claimant within 21 days.

Conclusion and Orders

14. The Court finds and declares that the termination of the Claimant's employment was unfair and awards him

(a) Salary in lieu of notice Kshs 19,000/-

(b) Compensation Kshs 38,000/-

TOTAL Kshs 57,000/-

15. The award to attract interest at Court rates from date of judgment.

16. Respondent to issue certificate of service within 21 days.

17. The Claimant to have costs.

Delivered through Microsoft teams, dated and signed in Nairobi on this 2nd day of October 2020.

Radido Stephen

Judge

Appearances

For Claimant Kenyatta Odiwuor & Co. Advocates

For Respondent Gitonga Kinyanjui & Co. Advocates

Court Assistant Judy Maina