



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 1649 OF 2016**

**PASCAL LAZARUS OCHUDO.....CLAIMANT**

**v**

**ZAP CAR HIRE & TOURS LTD.....RESPONDENT**

**JUDGMENT**

1. Pascal Lazarus Ochudo (Claimant) sued Zap Car Hire and Tours Ltd on 17 August 2016 alleging unfair termination of employment and breach of contract.
2. According to an affidavit of service filed in Court on 24 July 2017, the Respondent was served with Notice of Summons and Memorandum of Claim on 5 September 2016 and the service was acknowledged by one Zohaib.
3. Despite the service, the Respondent did not enter Appearance and/or a Response.
4. On 19 June 2018, the Court directed that the Cause proceeds to formal proof.
5. When the Cause was called out for hearing on 23 September 2020 and because of the Covid-19 public health pandemic, the Court ordered the Claimant to file an affidavit containing his evidence.
6. The Claimant filed the affidavit on 7 October 2020 and submissions on 8 October 2020.
7. The Court has considered the affidavit and the submissions.

**Unfair termination of employment**

8. The Claimant was employed by the Respondent as a driver around 24 September 2013.
9. The Claimant's evidence that he was dismissed on 15 July 2016 without a hearing remains unrebutted. The decision was procedurally unfair.
10. The reason for the dismissal, the Claimant stated was that he had left behind a staff member he was meant to transport to someplace.
11. Since the Respondent did not participate in the proceedings to discharge the burden of proving the fairness and validity of the reasons, the Court can only conclude that the dismissal of the Claimant was also substantively unfair.

**Compensation and Salary in lieu of notice**

12. The Claimant served the Respondent for about 4 years and in consideration of the length of service, the Court will award the equivalent of 4-months gross wages as compensation (gross salary was Kshs 16,823/-).
13. Because the Claimant was not given the notice envisaged by section 35(1)(c) of the Employment Act, 2007, the Court will allow the equivalent of 1-month salary in lieu of notice.

**Breach of contract**

**Accrued leave**

14. The Claimant did not tender any evidence on this head of the claim. Relief is declined.

**July 2016 salary**

15. Although praying for Kshs 16,823/- on account of July 2016 salary the Claimant did not lead any evidence thereto in the affidavit. Relief is declined.

**Certificate of Service**

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

**Conclusion and Orders**

17. The Court finds and declares that the dismissal of the Claimant was unfair and awards him

(a) Compensation                      Kshs 67,292/-

(b) Salary in lieu of notice        Kshs 16,823/-

TOTAL                                      **Kshs 84,115/-**

18. Respondent to issue a certificate of service within 21 days.

19. Claimant to have costs and interest from the date of judgment.

**Delivered through Microsoft teams, dated and signed in Kisumu on this 18<sup>th</sup> day of November 2020.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant                              Mr. Jaoko instructed by Achola Jaoko & Co. Advocates

Respondent                                did not participate

Court Assistant                         Judy Maina