



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 1642 OF 2013

PETER BARASA WEPUKHULU.....CLAIMANT

VERSUS

NODOR (K) EPZ LIMITED.....RESPONDENT

JUDGMENT

1. This Cause was heard on 29 October 2018 and on 6 November 2018. Peter Barasa Wepukhulu (Claimant) testified on his own behalf. Nodor (K) EPZ (Ltd), (Respondent) called a former security supervisor to testify on its behalf.

2. The Claimant filed his submissions on 20 November 2018 while the Respondent filed its submissions on 20 December 2018.

3. The Court has considered the pleadings, evidence and submissions and condensed the Issues for determination as examined herein under.

Whether termination of employment was unfair

4. In terms of section 35(1)(c) of the Employment Act, 2007 a *written notice of termination of employment* is required if the employee is paid by the month.

5. Section 41 of the Act on the other hand contemplates affording the employee an opportunity to make representations before termination of employment.

6. The Claimant's testimony that there was no *written notice of termination* or a hearing as envisaged by the statute was not rebutted. The evidence tendered was that the Claimant was suspended and then called on 22 May 2013 and issued with a letter terminating his employment.

7. The Court therefore concludes that the termination of the Claimant's employment was tainted with procedural unfairness.

8. With the conclusion on procedural fairness, it is not necessary for the Court to examine whether the Respondent satisfied the test imposed on it by sections 43 and 45 of the Employment Act, 2007.

Compensation

9. The Claimant served the Respondent for about 5 years, and on account of the length of service, the Court is of the view that the equivalent of 5 months gross wages as compensation would be fair (gross wage was Kshs 12,592/- per month).

10. The Court notes that the Claimant was paid the equivalent of 1 month wage in lieu of notice through the May 2013 pay slip.

Service pay

11. The Claimant's pay slip produced in Court show he was contributing to the *National Social Security Fund*, and therefore he is not eligible for service pay by dint of section 35(5) & (6) of the Employment Act, 2007.

Leave pay

12. The Claimant acknowledged payment of 9 outstanding leave days for 2013 and therefore is not entitled to any relief on account of leave.

Conclusion and Orders

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

(a) Compensation **Kshs 62,960/-**

14. Claimant to have costs of Kshs 30,000/-.

Delivered, dated and signed in Nairobi on this 25th day of January 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr. Ndungu instructed by Njogu & Co. Advocates

For Respondent Mr. Mutanda instructed by Gitonga Mureithi & Co. Advocates

Court Assistant Lindsey