



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1750 OF 2013

(Before Hon. Justice Mathews N. Nduma)

BENSON MAKAU.....CLAIMANT

VERSUS

OCEAN SOLE LIMITED.....RESPONDENT

J U D G M E N T

1. This claim is undefended in that, the Claimant testified under oath in support of all the particulars of claim and the Respondent closed their case without tendering any evidence in rebuttal. The testimony by the Claimant is therefore uncontroverted and the Claimant has proved all the particulars of claim on a balance of probabilities and judgment is entered in favour of the Claimant as against the Defendant as follows:-

- a) One month salary in lieu of notice Kshs.14,900.
- b) 12 days salary in lieu of leave days not taken Kshs.5,960.
- c) Underpaid salary from 2011 to June 2012 Kshs.69,816; for July 2012 to 31st July 2013 Kshs.72,930 and for August 2013 7,170. The underpayments are in terms of the general wage orders published for the respective periods.
- d) Compensation

The Claimant was employed as an animal carver from 2009. He worked continuously until 16th September, 2013 when upon reporting to work, he was summoned by the Production Manager Idah together with the Director Mr. Desmond Tutu. The two summarily dismissed him from employment without notice, notice to show cause or a disciplinary hearing. The summary dismissal violated sections 41, 43 and 45 of the Employment Act. The Claimant is entitled to compensation in terms of sections 49(1) (c) and 49(4) of the Employment Act. In this respect the Claimant had served the Respondent diligently the period of four (4) years. He was no paid any terminal benefits upon dismissal. He was underpaid for most of the years he served. The claimant did not contribute to the dismissal from the evidence before court. The Claimant is awarded four (4) months' salary in compensation for the unlawful and unfair dismissal.

2. In the final analysis Judgment is entered in favour of the Claimant as against the Respondent as follows:-

- a) Kshs.59,600 being four (4) months salary in compensation for the unlawful and unfair dismissal.
- b) Kshs.14,900 being one month's salary in lieu of notice.
- c) Kshs.149,916 underpayments for the years 2011 to 2013.

Total award Kshs.224,416.

- (d) Interest at court rates from date of judgment for (a) above and from date of filing suit in respect of (b) & (c) above.
- (e) Respondent to pay costs of the suit.

Dated and Signed in Kisumu this 20th day of December, 2018

Mathews N. Nduma

Judge

Delivered and signed in Nairobi this 18th day of January, 2019

Maureen Onyango

Judge

Appearances

M/s Githogori for Claimant

Mr. Namada for Respondent

Daniel Ngumbi – Court Clerk