



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NUMBER 1416 OF 2015

JOSHUA WAMBUA MAWEU.....CLAIMANTS

VERSUS

NEXT INVESTMENT LIMITED.....RESPONDENT

JUDGEMENT

1. The claimant pleaded that he was for over two years as a care cleaner and diligently discharged his duties until the time of his dismissal on 17th September, 2013.
2. According to the claimant the respondent lumped up a host of unjustifiable and unsubstantiated excuses to terminate his services. The claimant further complained that the respondent never gave him a notice of dismissal and further that the respondent failed to pay his terminal dues upon dismissal.
3. The respondent entered appearance through the firm of Yunis Mohammed Advocates on 1st September, 2015 but failed to file a defence within stipulated time. The matter was therefore 25th October, 2016 ordered to proceed as undefended cause.
4. At the hearing which proceeded ex parte, the claimant further stated that he worked for the respondent for two years and that he used to be paid on commission and also monthly. He further stated that he used to report to work at 6.00 a.m and worked until 5.00 p.m.
5. On 17th Septemebr, 2013 he was at work and at around 2 p.m. he was told that he had been stopped from working. According to him, he had no issue at work and had good relationship with colleagues. He was never issued with any notice of termination or taken through any disciplinary hearing. It was further his evidence that they used to be issued with copies of receipts for work done on a daily basis.
6. The matter proceeded as undefended cause and further the respondent though entered appearances never field a response to the claim. The claimant's averment therefore remained uncontroverted.
7. In proof of his claim, the claimant attached copies of receipts which he stated they used to be supplied with for every carwash exercise undertaken. This was presumably to be held in calculating the claimants' daily commission or wage.
8. The claimants' letter of recommendation states that he had worked for the respondent for two years operating at car wash department however he received 15% commission based on employment. This therefore meant that for every carwash undertaken, the claimant would be entitled to 15% of the amount paid.
9. The claimant pleaded that his monthly salary was Kshs. 9,780/95 how this figure was arrived was not shown by the claimant since he did not attach any payslip or evidence of payment of such sum monthly as salary. The respondent however did not defend the claim hence the court will give the claimant the benefit of doubt and admit the figure stated as his monthly salary.
10. Section 45 of the Employment Act prohibits unfair termination of employment. A termination is unfair if the employer fails to prove that the reasons for termination is valid and or the reason is a fair reason related to the employees' conduct, capacity or compatibility and that the termination was conducted through a fair procedure.
11. The respondent did not defend this claim hence the court inevitably concludes that the respondents failed to prove the reasons for termination were valid and that the termination was carried out through a fair procedure.
12. The court therefore enters judgment against the respondent as follows:-

- (a) One month's salary in lieu of notice Kshs. 9,780.95
- (b) Leave days not taken Kshs. 19,561.90
- (c) Service pay at the rate of 15 days
 pay for each year of service Kshs. 9,780.95
- (d) House allowance Kshs. 23,574.16
- (e) Ten months' salary for unfair
 Termination of service Kshs. 97,809.50

Kshs. 160,507.50

- (f) Costs of this suit
- (g) Items (a) and (f) shall be subject to taxes where applicable
- (h) The decretal sum shall attract interest of court rates from date of the judgment until payment in full.

13. It is so ordered.

Dated at Nairobi this 18th day of January 2019

Abuodha J. N.

Judge

Delivered this 18th day of January, 2019

Abuodha J. N.

Judge

In the presence of:-

..... for the claimant

..... for the Respondent

Abuodha J. N.

Judge