



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 419 OF 2017

(Before Hon. Justice Mathews N. Nduma)

KENYA HOTELS AND ALLIED WORKERS UNION...CLAIMANT

VERSUS

TARATIBU BAR AND RESTAURANT.....RESPONDENT

J U D G M E N T

1. Suit was brought by a memorandum of claim on 10th November 2017 seeking a declaration that the termination of the employment of the grievant Stephen O. Odinga was unlawful and unfair and award reinstate the claimant to his job and in the alternative award compensation and grant the claimant certificate of service. The dispute was reported to Labour Ministry, conciliation took place but the matter remained unresolved and was certified as such by Hellen Maneno, the conciliator.
2. The claim was served and the respondent entered appearance on 19th January 2018 vide K'owinoh and Company Advocates.
3. The respondent did not file memorandum of response and the suit proceeded undefended to formal proof on 3rd May 2018. On the said day, Mr. K'owinoh sought leave to file an application to cease acting for the respondent for lack of instructions.
4. The court made no orders regarding that matter since the application had not been filed and the matter was slotted for hearing on the day.
5. CW1, the grievant Stephen Omondi Odinga testified that he was employed by the respondent and had recorded a witness statement dated 17th October 2017 which he relied upon as his evidence in chief. The claimant further relied on the undefended memorandum of claim and the annexures thereto.
6. The claimant, in his recorded witness statement testified that he was employed verbally as a cook by the respondent. On 3rd June 2015. That on 18th December 2015, the employment was verbally terminated by the respondent. That he was a member of the claimant union from 6th September 2015. That the grievant was to be paid Kshs 300 daily rate but the respondent had violated that agreement and instead paid the grievant Kshs 1,500 per month.
7. The grievant worked well and had a good relationship with the respondent. However, in mid-November 2015, the grievant's child got an accident and the grievant incurred heavy medical expenses. On 18th December 2015, he asked the respondent to pay him arrears salary to pay the medical bill but the respondent got angry and or demanded the grievant to disappear from his premises.
8. The grievant reported the matter to the union on the same day and a meeting to resolve the matter was proposed for 9th February 2016. A meeting was held but the dispute remained unresolved.
9. The grievant claims:
 - (i) 7 days in lieu of notice – Kshs 2,761.
 - (ii) 6 months probate leave – Kshs 3,451.
 - (iii) Under paid wages for 6 months between June 2015 to November 2015. The lawful minimum wage for a cook was Kshs 13,606 less Kshs 1,500 paid for 6 months – Kshs 72,636 and
 - (iv) Compensation for the unlawful termination.

Determination

10. The court is satisfied that the grievant has proved that he was employed by the respondent for a period of six months between June and November 2015. That during the time, he was paid Kshs 1,500 a month whereas the minimum wage for a cook was Kshs 13,606. That the grievant was summarily dismissed without notice, notice to show cause, or a hearing for daring to seek payment of arrear salary to pay his child's hospital bills.

11. The claim is undefended and the court finds that the claimant is entitled and is granted the following reliefs set out in the memorandum of claim:

- (i) One month salary in lieu of notice – Kshs 13,606.
- (ii) Payment in lieu of 6 months probative leave not taken – Kshs 3,451.
- (iii) Underpayments of wage between June 2015 to November 2015 – Kshs 72,636.
- (iv) Compensation.

The grievant worked for the respondent as a cook for a period of six months. During the whole period he was underpaid grossly. His child was involved in an accident during the time, and when he asked to be paid the underpayment to pay the medical bill, he was summarily dismissed. The grievant, did not contribute to the summary dismissal. The grievant was treated very badly, which conduct amounted to unfair labour practice. The grievant wished to continue working for the respondent. He lost his job and source of income suddenly and suffered loss and damage. Given the manner the grievant was treated, the court does not deem it appropriate to reinstate the grievant to his employment, instead the court grant the claimant compensation equivalent to three (3) months salary in terms of *Section 49(1) (c) as read with 49(4) of the employment Act 2007* in the sum of Kshs. 40,818 (13,606x3).

Total award to the claimant is Kshs 119,606.

- (v) Interest at court rates from date of judgment with respect to compensation in (iv) above and from date of filling suit with respect to other terminal benefits in (i), (ii), and (iii) above.

- (vi) Costs of the suit.

Judgment Dated, Signed and delivered this 21st day of February, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Simiyu for Claimant for the Claimant

Mr. K'owinoh for Respondent

Chrispo – Court Clerk