



**REPUBLIC OF KENYA**

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

**INDUSTRIAL CAUSE NO. 338 OF 2015**

***(Before Hon. Justice Mathews N. Nduma)***

**BENARD OYUGI.....CLAIMANT**

**VERSUS**

**JRS GROUP LIMITED.....RESPONDENT**

**J U D G M E N T**

1. The suit was filed by a memorandum of claim on 14<sup>th</sup> September 2015 seeking compensation for wrongful dismissal and payment of terminal benefits to wit:

- (i) Salary arrear from 31<sup>st</sup> December 2013 for 4 months in the sum of Kshs. 42,000 at Kshs. 10,500 per month.
- (ii) Three (3) months salary in lieu of notice.
- (iii) Three (3) months in lieu of leave.

2. The claim is opposed vide the respondent's statement of defence filed on 3<sup>rd</sup> November 2015 in which the employment of the claimant as a car driver is admitted.

3. The respondent further admits that the claimant was summoned by the Human Resource Manager on 24<sup>th</sup> March 2014, upon being involved in a road traffic accident while driving motor vehicle registration No. KAJ 370E which resulted to extensive damage of the rear bumper and the tail light.

4. That the claimant was asked to foot the repair costs in line with the company policy and he signed an indemnity and settlement agreement to allow deduction of Kshs. 12,000 from the claimant's salary being the estimated costs of repair.

5. Whereas the claimant states that the human resource manager summarily dismissed him from work on that day, the respondent denies that stating that the claimant absconded duty without giving any reason to avoid the indemnity arrangement.

6. The issues for determination are therefore:-

- (i) Whether the claimant was unlawfully and unfairly summarily dismissed from work by the respondent or the claimant absconded work to avoid indemnity.
- (ii) Whether the claimant is entitled to the reliefs sought.

**Evidence**

7. CW1 the claimant testified in support of the case and told court that he was employed by the respondent on 10<sup>th</sup> January 2013 as a driver. That he was based in Kisumu and later transferred to Kakamega. That on 24<sup>th</sup> March 2014, he was simply told to leave work. The claimant said he got no show cause letter and no disciplinary hearing was held. That the manager Transport directed the claimant to pay repair costs in respect of the damage to the car driven by the claimant that was involved in an accident. The claimant testified that he was not to blame for the accident as it was caused by brake failure. That he had informed the respondent that the brakes of the car were defective but no repairs were done. The claimant refused to sign the agreement to refund costs of repair hence the summary dismissal.

8. He said he was not paid salary for December 2013 and January 2014 and claims the same. He claims payment in respect of leave not given. He states that he was paid Kshs 10,500 basic salary instead of Kshs 12,184 provided in 2013 general wage order for drivers. The claimant also seeks compensation for unlawful and unfair dismissal.

9. RW1 John Ndururu testified for the respondent. He told the court that he was the regional manager of the respondent from the year 2002. That the claimant was employed by the respondent as a driver from February 2013 and worked until 8<sup>th</sup> January 2014, a period of about one year.

10. That on 8<sup>th</sup> January 2014, the claimant was involved in a road traffic accident and he agreed with the owner of the other vehicle that he was at fault and was to pay Kshs 12,000. The office paid the sum of Kshs. 12,000 to be recovered from the salary of the claimant slowly.

11. The claimant sought four (4) days off to attend to family matters. He came back after the 4 days and demanded to be paid salary for December 2013. The claimant was asked to sign a recovery agreement of the Kshs. 12,000 which he declined to do. That the claimant left work and did not return. He was not paid the December salary.

12. Under cross examination RW1 said the claimant left stating that he was stressed but was not dismissed from work. That the claimant had a previous warning letter. RW1 denied that the vehicle had poor brakes. That the claimant did not work in January and February 2014 and is not entitled to any salary. That he earned Kshs. 10,500 per month. That the claimant was about to complete one year service. He was given four (4) days to rest but was not dismissed.

13. The court finds that the claimant has failed to prove on a balance of probabilities that he was unlawfully and unfairly dismissed from work. The claimant bears the burden of proof in terms of *Section 107 and 108 of the Evidence Act, Cap 80 laws of Kenya*.

14. The respondent has sufficiently rebutted the allegation made by the claimant to that effect. The claim for unlawful dismissal lacks merit and is dismissed.

15. With regard to issue (ii), the claimant has proved that he had served for about one (1) year and was not granted annual leave and was not paid salary for December 2013. The claim for payment of equivalent of one month salary in lieu of leave is granted. Similarly, the December salary is awarded as prayed. The claim for underpayment being the difference in salary paid and the minimum wage provided for the year 2013 for car drivers i.e  $11,570 - 10,500 \times 12$  months = 12,840 is granted.

16. In the final analysis judgment is awarded in favour of the claimant as against the respondent as follows:

(i) Kshs 11,570 in lieu of one month leave.

(ii) Kshs. 11,570 being unpaid December salary.

(iii) Kshs. 12,840 being underpayment for 12 months.

**Total award – Kshs. 35,980.**

(iv) Interest at court rates from date of filing suit till payment in full.

(v) Costs of the suit.

**Judgment Dated, Signed and delivered this 14<sup>th</sup> day of March, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Nyanga & Co. Advocates for the claimant.

M/S Ongira for the respondent.

Chrispo – Court Clerk