



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI

CAUSE NUMBER 2355 OF 2012

ONESMUS MUSYOKI KILONZO.....CLAIMANT

VERSUS

NATION MEDIA GROUP.....RESPONDENT

JUDGEMENT

1. The claimant averred that he was employed by the respondent on 6th December, 2011 as an online Sub-Editor at a salary of Kshs 130,000/= per month exclusive of house allowance. The contract duration was for 6 months with effect from 1st December, 2011 to 30th may, 2012 both days inclusive.
2. The claimant worked until 30th January when the respondent terminated his employment without any notice or payment in lieu thereof and with assigning any reason. By the time of termination, the claimant had worked for two months only.
3. The respondent on the other hand pleaded that the claimant being a temporary employee on a probationary contract was only entitled to a weeks' notice as provided for by clause 3 of the contract of employment. Concerning leave, the respondent pleaded that the claimant was entitled to one weeks' notice hence could not have qualified for leave.
4. In his oral evidence the claimant further stated that as a Kiswahili editor he had to be trained because the job was complex however, he could not get a trainer to train him. There was to be a launch but he questioned how that would be possible yet he had not even been halfway through with the training. It was at this point when he was called by Mr Odundo and was told that there seemed to be friction between him and the coordinator hence he should just resign but he refused to resign. He was then sent to the Human Resource manager who issued him with a termination letter. It was his evidence that he was never called for any disciplinary hearing before termination.
5. In cross-examination he stated that he was hired for a particular assignment and that he required to be trained. He stated that his contract provided for leave but not prorata leave. He further conceded that his contract provided for one week's notice. He stated that he did not file his termination letter in court because he was never allowed to carry it away to consult. He further stated that he worked only for two months and was paid for those two month's.
6. The respondent elected not to call any evidence and asked the court to rely on their submissions.
7. The Employment Act requires that before termination of employment is done, an employee must be given a reason for which the termination is being considered and called upon to respond and where necessary call witnesses. This provision applied to all employees whether on probation or not. The court has seen nothing on record giving reasons why the claimant's service was terminated and whether before the termination he was called upon to show cause why his service should not be terminated. Failure to adhere to this requirements would lead to a finding that the termination was unfair and the court so finds and holds in this case.
8. Regarding compensation, the claimant was on a six months temporary contract and had only served for two months. The court also notes that prior to being issued with a temporary contract, the claimant had worked for the respondent for fourteen years. In the circumstance an award of Kshs 260,000/= being two months' salary as compensation for unfair termination would be reasonable. The claimant is further entitled to Kshs 30,333/= being one week's pay in lieu of notice.
9. In conclusion, judgement is entered against the respondent for Kshs 290,333/=. The claimant shall further have costs of the suit. The decretal sum herein shall be subject to taxes and statutory deductions but shall attract interest at court rates from date of judgement until payment in full.
10. It is so ordered.

Dated at Nairobi this 31st day of May, 2019

Abuodha J. N.

Judge

Delivered this 31st day of May, 2019

Maureen Onyango

Principal Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.