



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA

ELR CAUSE NO. 35 OF 2017

LABAN KASIEVELA.....CLAIMANT

VERSUS

JIANGXI ZHQNGMEI ENGINEERING COMPANY LTD.....RESPONDENT

J U D G E M E N T

The Claimant filed this suit on 9th.December 2016 seeking award of compensation for unlawful and unfair dismissal and payment of terminal benefits set out under paragraph 9 of the statement of claim to wit.

- i. One month salary in lieu of notice Kshs 36, 672
- ii. Arrear salary for July 2016 Kshs 24,147
- iii. Accrued leave days being 60 in number for the year 2015 and 2016 Kshs 48,294 and
- iv. Service gratuity for twelve years Kshs 300,000

The claim was opposed by a statement of Response filed on 25.1.2017. The Respondent does not deny having employed the Claimant but denies having dismissed him unlawfully.

The Respondent avers that it paid the Claimant one month salary in lieu of notice; that the Claimant was offered service pay and that the Claimant was always paid his leave days for the entire period of service.

The Claimant testified as CW1 and told the court that he worked for Respondent as a mechanic from the year 2012. That he worked continuously until 2016 when the Respondent without any proper cause and without any notice terminated his services.

That the termination was as a result of a suit the Claimant had filed in Bungoma Law Courts in which the Respondent was ordered to pay the Claimant Kshs 100,000 for injuries sustained while at work.

That before termination, the Claimant had not gone for leave for two years and had not been paid in lieu of notice.

That upon termination the Claimant made a report to the Labour Officer at Kitale who wrote to the Defendant. That the Defendant ignored the Letter of Demand from the Labour officer. The Claimant relied on the written statement dated 11.11.2016 and filed on 9.12.2016 as his evidence in chief. The Claimant produced Letter of Appointment and pay slips as exhibits in support of his case.

Under cross examination by Advocate Amalo for the Respondent the Claimant testified that he earned Kshs 24,147 per month at the time of termination. That his starting salary was 15,580 plus 2,337 house allowance.

That he was dismissed on 13.6.2016 for no good reason at all. That the Respondent just told him to go away. The Claimant suspected that the work injury case at Bungoma Law Courts caused his dismissal. The Claimant denied that the Respondent called him to collect his terminal benefits and that he had refused.

The Claimant said that he had not yet obtained any other job. That he now does small business.

The Claimant prays to be awarded the reliefs sought in the suit.

The Respondent closed its case without calling any witness. The Claimant's suit is therefore undefended in that his testimony before court is

not controverted by the Respondent.

Determination

The issues for determination are:

- i. Whether the Claimant was dismissed for a valid reason and in terms of a fair procedure.
- ii. Whether the Claimant is entitled to the reliefs sought.

Issue 1.

The Claimant has through his oral and documentary evidence proved on a balance of probabilities that he was employed by the Respondent as a mechanic from November 2012. That he worked continuously until 13th June 2016 when he was dismissed from work by the Respondent without notice, notice to show cause or disciplinary hearing. That the Claimant was not given any reason for the dismissal but was simply told to go home.

The Claimant testified that he had filed a work injury claim against the Respondent at Bungoma Law Courts in which the court awarded him Kshs 100,000 against the Respondent. The Claimant told the court that he suspected that this was the reason for the summary dismissal by the Respondent.

The Claimant testified that at the time of dismissal he earned Kshs 24,147 and that he was not paid in lieu of notice. Was not paid July 2016 salary and that he had not gone on leave for the years 2015 and 2016. He claims payment in lieu of leave days not taken and service gratuity for those years.

The court finds that the Claimant has proved all the terminal benefits claimed since no evidence to rebut the claims was adduced by the Respondent. The court awards the Claimant accordingly.

With respect to the claim for compensation. The court finds that the summary dismissal of the Claimant was not for a valid reason and a fair procedure was not followed in summarily dismissing the Claimant. The Respondent therefore violated Sections 41, 43 and 45 of the Employment Act, 2007 and the Claimant is entitled to compensation in terms of Section 49 (1) (c) and (4) of the Act.

In this respect the Claimant did not contribute to the unlawful dismissal. The Claimant was not paid any terminal benefits upon dismissal. The Claimant had not found alternative job since the dismissal. The Claimant had no adverse record at work since none was produced by the Respondent.

The Claimant had served the Respondent diligently for a period of about 3 years and seven (7) months.

The court deem this an appropriate case to award the Claimant the equivalent of four (4) months salary in compensation for the unlawful and unfair summary dismissal in the sum of Kshs 96,588.

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

- a) 4 months salary in compensation Kshs 96,588.
- b) Kshs 24,147 in lieu of one month notice.
- c) Kshs 10,463.70 being 13 days salary for the month of June 2016.
- d) Kshs 48,294 being payment in lieu of leave days not taken for the years 2015 and 2016.
- e) Kshs 36,330.50 being three years service gratuity calculated at 15 days salary for each completed year of service.

Total ward Kshs 162,825.50

f) Interest at court rates from date of filing suit for items (b) and (e) above and from date of judgment for (a) above till payment in full.

g) Costs of the suit.

DATED, SIGNED and DELIVERED at BUNGOMA this 30Th day of MAY, 2019.

HON. M. N. NDUMA, JUDGE

EMPLOYMENT AND LABOUR RELATIONS COURT

BUNGOMA

Appearances:

Mr. Wamalwa for Claimant

Mr. Amalo for Respondent

Chrispo: Court Assistant.