



**REPUBLIC OF KENYA**

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

**CAUSE NO 797 OF 2017**

**AGGREY JUMA WANJALA.....CLAIMANT**

**VERSUS**

**HABO GROUP OF COMPANIES.....RESPONDENT**

**JUDGMENT**

**INTRODUCTION**

1. This claim is brought by Aggrey Juma Wanjala against Habo Group of Companies. The claim is documented by a Memorandum of Claim dated 5<sup>th</sup> October 2017 and filed in court on the same date.

2. The Respondent filed a Memorandum of Response on 7<sup>th</sup> May 2018 but did not call any witness in spite of being availed adequate opportunity to do so. The Claimant testified on his own behalf. Both parties filed written submissions.

**The Claimant's Case**

3. The Claimant pleads that he was employed by the Respondent as a cleaner on 1<sup>st</sup> July 2007. He was promoted to the position of Receiving Clerk on 31<sup>st</sup> August 2010. The Claimant worked for the Respondent until 21<sup>st</sup> July 2017 when his employment was terminated. At the time of termination, he earned a monthly salary of Kshs. 40,000.

4. It is the Claimant's case that the termination of his employment was unlawful and unfair. He now claims the following:

- a) One month's salary in lieu of notice.....Kshs. 40,000
- b) Salary for the month of February.....40,000
- c) House allowance @ 15% of basic pay.....474,000
- d) SACCO savings.....120,000
- e) Compensation for unlawful termination.....480,000
- f) Certificate of service
- g) Costs

**The Respondent's Case**

5. In its Memorandum of Response dated 3<sup>rd</sup> May 2018 and filed in court on 7<sup>th</sup> May 2018, the Respondent states that it never employed the Claimant. The Respondent therefore maintains that it does not owe the Claimant any dues as there was no contract of employment or letter of termination emanating from it.

6. The Respondent makes reference to letter of employment dated 7<sup>th</sup> January 2009 and confirmation letter dated 31<sup>st</sup> August 2010 issued by Awanad Enterprises Limited, which is a different legal entity independent from the Respondent.

**Findings and Determination**

7. There are three (3) issues for determination in this case:

- a) Whether there was an employment relationship between the Claimant and the Respondent capable of enforcement by this Court;
- b) Whether the Claimant has made out a case of unlawful termination against the Respondent;
- c) Whether the Claimant is entitled to the remedies sought.

**Employment Relationship?**

8. In its Memorandum of Response, the Respondent denies having employed the Claimant. In this regard, the Respondent relies on offer of employment dated 7<sup>th</sup> January 2009, transfer letter dated 31<sup>st</sup> April 2010 and confirmation letter dated 31<sup>st</sup> August 2010, all issued to the Claimant by Awanad Enterprises Limited.

9. The Respondent’s case therefore is that any claim by the Claimant lies against Awanad Enterprises Limited and not the Respondent. The Respondent however failed to explain payslips issued to the Claimant which not only bore the Respondent’s logo but were also stamped and signed by its Human Resource Department. Significantly, the said payslips show Awanad as department of the Respondent. The Respondent did not challenge the authenticity of these payslips nor did it bother to explain under what circumstances it had issued payslips to a person who was not its employee.

10. The Court was therefore convinced that there was adequate documentary evidence that there was indeed an employment relationship between the Claimant and the Respondent.

**Unlawful Termination**

11. The next issue for determination is whether the Respondent has made out a case of unlawful termination against the Respondent. The Claimant testified that he and 4 of his colleagues were arrested on 21<sup>st</sup> July 2017 on allegations of theft.

12. After being released, the Claimant went back to work on 28<sup>th</sup> July 2017 but was told by the Human Resource Manager to go home and wait to be called back. He was never called and that is how his employment came to an end.

The Respondent did not call any evidence to contradict the Claimant’s testimony on this account and the Court found no reason to disbelieve him.

13. What emerges therefore is that the Respondent terminated the Claimant’s employment without justifiable cause and without following due procedure. As a consequence, the Claimant is entitled to compensation.

**Remedies**

14. On the heels of the foregoing findings, I award the Claimant twelve (12) months’ salary in compensation. In arriving at this award, I have taken into account the Claimant’s long service and the Respondent’s conduct in effecting the termination. I further award the Claimant one (1) month’s salary in lieu of notice.

15. The Claimant also claims house allowance. However, both the employment and confirmation letters specify that he was to earn a gross remuneration which would ordinarily include house allowance. The claim for house allowance is therefore without basis and is dismissed.

16. The claims for salary for February and SACCO savings were not proved and are also dismissed.

17. In the ultimate, I enter judgment in favour of the Claimant as follows:

- a) 12 months’ salary in compensation.....Kshs. 480,000
- b) 1 month’s salary in lieu of notice.....40,000
  
- Total.....520,000**

18. This amount will attract interest at court rates from the date of judgment until payment in full.

19. The Claimant is also entitled to a certificate of service plus costs of the case

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 23RD DAY OF MAY 2019**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Nyange for the Claimant

Mr. Bosire for the Respondent