



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2023 OF 2015

(Before Hon. Justice Hellen S. Wasilwa on 22nd May, 2019)

FRANCIS NGIGI NGUGI CLAIMANT

VERSUS

NAKUMATT HOLDINGS LIMITEDRESPONDENT

JUDGEMENT

1. The Claimant filed the instant Claim on 12th November, 2015, seeking damages for wrongful and unfair termination of his employment and failure by the Respondent to pay terminal dues owed to the Claimant.
2. The Claimant states that he was employed by the Respondent as a Shop Assistant on or about 6th October, 2013 earning a basic monthly salary of Kshs.7,900/= only. He further avers that he worked with loyalty, diligently and to the Respondent's satisfaction until 8th May, 2011 when his services were wrongfully and unlawfully terminated.
3. The Claimant contends that upon his separation from the Respondent's employment, the Respondent has failed/ignored or refused to pay his terminal dues totalling to Kshs.244,110/=. The Claimant further contends that his termination was done without any notice or payment in lieu of such notice.
4. He further contends that it was illegal and wrongful for the Respondent to terminate his services in the manner without giving him notice or a chance to show cause contrary to the provisions of Section 41 of the Employment Act, 2007 as his termination was verbal.
5. The Claimant avers that the Respondent refused/declined or failed to pay his terminal dues despite requisite demand being issued prompting the Claimant to file the instant Claim now pending before this Honourable Court.
6. In his Memorandum of Claim the Claimant prays for Judgment be entered against the Respondent for:-
 - a. **The sum of Kshs. 244,110/- as particularised in Paragraph 5 of the Claim. Inclusive of compensation for wrongful dismissal to a maximum of 12 months' wages as particularised in Paragraph 5 of the Claim.**
 - b. **Costs of this Suit.**
 - c. **Interest in a) and b) above.**
 - d. **Any other relief as the Court may deem just.**
7. The matter was scheduled for hearing on 1st April, 2019. The Respondent though duly served with the Hearing Notice and an Affidavit of Service filed in Court, failed to attend the hearing and the matter proceeded ex-parte with the Claimant (CW1) testifying on his own behalf.
8. It was CW1's evidence that he was employed by the Respondent herein on 6th October, 2003 as a Shop Assistant on permanent and pensionable basis earning a monthly salary of Kshs. 7,900/- and that he worked continually until 1st September, 2009 when his services were unlawfully and wrongfully terminated.
9. CW1 further testified that prior to his termination the Respondent failed to give him any warning or notice to terminate his services as

required under the Employment Act. He further averred that he had been sick prior to his termination and that he believed that his services were terminated on account of his illness.

10. CW1 further stated that prior to his termination the Respondent did not issue him with any notice nor was he heard.

11. CW1 urged the Court to allow the Claim as drawn.

12. I have examined the evidence of the Claimant herein. There is evidence that the Claimant was employed by the Respondent and was dismissed on 1/9/2009. There is no evidence showing how he was dismissed by the Respondent.

13. The dismissal letter does not give reasons for the summary dismissed.

14. In absence of any evidence from the Respondent, the Claimant's case remains uncontroverted. I find that the Claimant has proved his case against the Respondent on a balance of probabilities.

15. I find for the Claimant and I award him as follows:-

1. 1 months' salary in lieu of notice = Kshs.7,900/=

2. Leave for 3 years = 7,900 x 3 = 23,700/=

3. 6 months salary as compensation for unfair termination = 7,900 x 6 = 47,400/=

4. Unpaid salary from July 2008 to August 2009 = 7,900 x 12 = 94,800/=

Total = 173,800/=

5. The Respondent will also pay costs of the case and interest at Court rates with effect from the date of this Judgement.

Dated and delivered in open Court this 22nd day of May, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties