



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 906 OF 2014

(Before Hon. Lady Justice Maureen Onyango)

FRANCIS CHACHA.....CLAIMANT

VERSUS

EUROCRAFT AGENCY LIMITED.....RESPONDENT

JUDGMENT

This case was partly heard by Nduma J. who heard the claimant's case. The case was then adjourned for hearing of the defence case. However on 18th July 2018 when the case came up for hearing of defence case the respondent opted to close its case without calling any witness, opting to rely on the pleadings and its written submissions.

In the memorandum of claim dated 29th May 2014 as amended on 28th November 2016, the claimant avers that he was unfairly dismissed from service and seeks the following remedies –

a. Reinstatement without loss of benefits

Alternatively

b. One month's Salary in lieu of notice the sum of Kshs.14,538

c. Holiday work allowances the sum of

$770 \times 10 \times 2 + (5 \times 770)$ Kshs.19,250

d. Overtime, worked (two and half years) the sum of

$700 \times 8 \times 30 \times 12 + (700 \times 8 \times 30 \times 6)$ Kshs.5,040,000

e. Leave days since 11th February £012 (for two and half years) the sum of $3,000 \times 2 = 6,000 + (\times 3,000)$ Kshs.7500

f. 12 months' salary compensation for unfair termination the sum of

$14,538 \times 12$ Kshs.174,456

g. Costs of the suit

h. Interest in (b) to (g) above at court rates until payment in full

i. Any other relief as this court may deem just and fair to grant.

The respondent filed a statement of response dated 24th September 2014 but filed on 13th October 2014. No response was filed to the amended statement of claim.

At the hearing the claimant testified that on 1st January 2014 he was appointed Team Leader in the Customer Service Department by the Duty Officer. The appointment was at 9 pm and was verbal. As Team Leader, he was supposed to be in possession of the customer service cell phone through which telephone calls from clients were responded to.

The claimant testified that he responded to all calls but realised that there were several missed calls made before he took over the phone. He testified that the issue of missed calls was very sensitive as it could lead to withdrawal of contracts by their contracting airlines. Since he was afraid of being blamed for the missed calls he returned the cell phone to the Duty Officer, Mr. Muema, who had appointed him.

He testified that Mr. Muema wrote a report to the Station Manager accusing him refusing to take up the appointment as Team Leader and throwing the telephone to Mr. Muema. He was accused of defiance and insubordination. He testified that he worked until 9 am on 2nd January 2014 and then went home. He was supposed to resume duty on 4th January 2014 in the morning. However on 3rd January 2014 he received a text message from the Duty Manager to return his duty pass. He was informed this was because of the missed calls. He complied and returned the duty pass. On 4th January 2014 he was called by the Human Resource Officer to explain what happened on 1st January 2014. He explained in writing. He then continued working.

On 9th January the claimant was called to the Human Resource Office and informed by the Human Resource Officer in the presence of the Station Manager that he had been dismissed from service. He was then handed the letter of dismissal dated 2nd January 2014.

The claimant submits that the termination was unfair, unlawful and malicious because he had no warning letters, he did not get any notice of the termination, he was not issued with a certificate of service and he was not given a hearing before dismissal.

Determination

The issues for determination are whether the dismissal of the claimant was unfair and if he is entitled to remedies sought.

The evidence of the claimant is uncontested and uncontroverted, as the respondent did not call any witness to rebut the same. The letter of dismissal does not refer to any hearing before the dismissal. Paragraph 1 and 2 of the letter are reproduced below –

“RE: SUMMARY DISMISSAL LETTER.

On 2nd January 2014 you were instructed by the duty officer through the station manager to assume the responsibilities of an acting team leader customer service. You refused to head these instructions and further refused to discuss with the station manager the same after being told to do so. You went ahead and signed out and did not wait for him as instructed.

Consequently because of the above reason, the company dismisses your services effective 2nd January 2014 in accordance to Section 44 (4)(e) of the Employment Act 2007.”

It is evident from the letter that the claimant was not given a hearing. It is further evident that at the time the claimant was called to return the duty pass on 3rd January 2014, he had already been dismissed.

I thus find the dismissal of the claimant unfair.

Remedies

The claimant is entitled to pay in lieu of notice which I award him at Kshs.15,383 as per gross pay in his payslip for October 2013. I find the prayer for overtime not proved and it is dismissed.

The claimant's contract provided for leave allowance of Kshs.3,000 per year. He did not testify that this was increased over time. He is thus entitled to leave allowance of Kshs.3,000 per year. I award him 3 years leave allowance at Kshs.9,000.

The claimant testified that he did not take leave for the entire period he worked for the respondent. In the absence of records and rebuttal by the respondent, I award the claimant annual leave at 21 days per year. Having worked for 35 months, he is entitled to 61.25 days' leave. Based on his basic salary of Kshs.11,089.50, he is entitled to Kshs.26,025 which I award him.

The claimant did not prove that he worked on public holidays for which he was not compensated.

Having been unfairly terminated and taking into account the manner in which he was relieved of his service, the length of service and all other relevant factors as set out in Section 49(4) I award the claimant five (5) months' salary as compensation in the sum of Kshs.76,915.

In conclusion therefore, I declare the summary dismissal of the claimant unfair and award him a total of Kshs.127,323 made up as follows –

1. Notice Kshs.15,383
2. Leave Kshs.26,025

3. Leave allowance Kshs.9,000

4. Compensation Kshs.76,915

Total Kshs.127,323

The respondent shall pay claimant's costs.

Respondent shall issue a certificate of service to the claimant.

Decretal sum shall attract interest at court rates from date of judgment.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 20TH DAY OF MAY 2019

MAUREEN ONYANGO

JUDGE