



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO 123 OF 2018

WILFRED WAFULA KHAEMBA.....CLAIMANT

VS

SHIVA CARRIERS LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. On 13th March 2018, the Claimant filed a Memorandum of Claim seeking relief for unlawful and unfair termination of employment. The Respondent responded to the Claimant's claim by way of a Response dated 16th April 2018 and filed in court on 18th April 2018. The Claimant responded to the Respondent's Response on 11th May 2018.

2. The matter came up for hearing on 16th January 2019 when the Claimant testified on his own behalf. The Respondent chose not to call any witness. Both parties filed written submissions.

The Claimant's Case

3. The Claimant states that he was employed by the Respondent as a Truck Driver from 5th August 2016 until 24th April 2017 when his employment was terminated. He earned a monthly salary of Kshs. 24,720.

4. The Claimant's case is that the termination of his employment was unlawful and unfair as there was no valid reason for the termination and he was not afforded an opportunity to defend himself.

5. The Claimant's claim against the Respondent is as follows:

- a. One month's salary in lieu of notice...Kshs. 24,720
- b. 12 months' salary in compensation.....296,640
- c. Certificate of service
- d. Costs plus interest

The Respondent's Case

6. In its Response dated 16th April 2018 and filed in court on 18th April 2018, the Respondent denies that the Claimant was employed continuously as a Truck Driver from 5th August 2016 until 24th April 2017.

7. The Respondent further denies that the Claimant's employment was unlawfully and unfairly terminated. The Respondent maintains that if at all the Claimant's employment was terminated, it was done within the law and due process was followed.

Findings and Determination

8. There are two (2) issues for determination in this case:

- a. Whether Claimant has made out a case of unlawful termination of employment;
- b. Whether the Claimant is entitled to the remedies sought.

Unlawful Termination?

9. In his testimony before the Court, the Claimant stated that on 24th April 2017, he was arrested on allegations of stealing a truck. He was detained for nine months and was discharged in December 2017.

10. The Claimant added that he had no prior notice of any administrative charges against him and was not allowed an opportunity to defend himself.

11. The Respondent did not call any witness to countermand the Claimant’s testimony. Instead, the Respondent submitted that the Claimant was never its employee because he did not sign the offer of employment dated 5th August 2016. The Respondent did not offer any explanation as to how the Claimant came into contact with its truck, if indeed he was not its employee.

12. On the whole, the Court believes the Claimant’s account that his employment was unlawfully and unfair terminated. He is therefore entitled to compensation.

Remedies

13. Pursuant to the foregoing findings, I award the Claimant three (3) months’ salary in compensation. In arriving at this award, I have taken into account the Claimant’s length of service and the Respondent’s conduct in handling his case. I further award the Claimant one (1) month’s salary in lieu of notice.

14. I therefore enter judgment in favour of the Claimant as follows:

- a. 3 months’ salary in compensation.....Kshs. 85,282
- b. 1 month’s salary in lieu of notice.....28,427
- Total.....113,709**

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

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

17. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 2ND DAY OF MAY 2019

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JUDGE

Appearance:

Mr. Ngonze for the Claimant

Mr. Ngaine for the Respondent