



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 278 OF 2016**

**JUSTUS MUINDE MULWA.....CLAIMANT**

**- VERSUS -**

**HIGHRISE PRODUCTS LTD.....1<sup>ST</sup> RESPONDENT**

**JOSEPH K. KARIUKI.....2<sup>ND</sup> RESPONDENT**

(Before Hon. Justice Byram Ongaya on Wednesday 31<sup>st</sup> July, 2019)

**JUDGMENT**

The claimant filed the memorandum of claim on 25.02.2016 in person. He prayed for judgment against the respondent for:

- a. 12 months' compensation for unfair termination 12 x Kshs.8, 000.00 making Kshs.96, 000.00.
- b. Unpaid salary for July, August, and September 2015 Kshs.24, 000.00.
- c. A month's pay in lieu of notice Kshs.8, 000.00.
- d. Service pay from September 2010 to September 2015 for 2 months 15 days Kshs.20, 000.00.
- e. Annual leave pay from September 2010 to September 31, 2015 21 days per year Kshs.28, 003.50.
- f. Refund of NHIF deductions not remitted January 2011 to 31.09.2015 Kshs.200.00 per month Kshs.11, 400.00.
- g. Cost of the suit plus interest at Court rates.
- h. Total sum claimed **Kshs.187, 403.50.**
- i. Any other relief the Court may deem fit to grant.

The respondents filed on 27.07.2016 the response to the claim through Rumba Kinuthia & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs.

It is not in dispute that the 2nd respondent is a director of the 1st respondent. It is also not in dispute that the claimant was employed by the 1st respondent as a driver from September 2010 to 31.09.2015.

The claimant's case was that on 31.09.2015 the 2nd respondent unlawfully terminated his employment.

The respondent's case was that the claimant was not unlawfully terminated but he was put on compulsory leave for investigations to be undertaken about loss of funds. The respondent alleged that the loss related to the claimant's selling of company products but without remitting the money to the respondent. The compulsory leave was therefore lawful. The respondent admitted that the claimant was entitled to Kshs.14, 000.00 being salary arrears.

Despite service, the respondent did not attend the hearing of the suit. The claimant testified to support his case as follows:

- a. He was employed by the 1st respondent as a driver from 01.09.2010 to 30.09.2015.
- b. On 30.09.2015 he reported on duty at 8.00am. The respondent's manager one Paul Gatere Ndungu then told the claimant to go back home until when he'd be recalled back. He was told he'd be recalled after 2 weeks but he was never recalled. As at 30.09.2015 he had not been paid for 3 months.
- c. When 2 weeks lapsed he went back at work and Paul told him that there was no work for him. When the claimant inquired about his salary arrears and terminal dues, he was told that he was owed no money.
- d. He asked for a certificate of service and he was given a recommendation letter dated 21.10.2015.
- e. The claimant reported a dispute to the area labour officer and the respondent was summoned and promised to pay in 7 days but failed to do so. The amount payable was not agreed upon. Later the labour officer told the claimant the 1st respondent had no money to pay. The claimant then filed the suit.
- f. The claimant testified that he was not a member of NSSF; he earned Kshs.8, 000.00 per month; NHIF was deducted and not remitted; and he claimed as per the memorandum of claim

The Court has considered the evidence. The Court return that in view of the minimum terms of service in the Employment Act, 2007 the claimant has established his case. The termination was unfair for want of valid reason and due process as per sections 43 and 45 of the Employment Act, 2007. The claimant desired to continue in employment and he did not contribute to his termination. The aggravating factors are that he had served for a long term of 5 years without statutory dues of NHIF and NSSF. He was denied annual leave and his salaries were withheld for 3 months. The Court finds that in the circumstances 12 months' salaries in compensation under section 49 of the Act as prayed for will meet the ends of justice. Further the claimant is entitled to pay in lieu of annual leave per section 28 of the Act, service pay per section 35 of the Act and he has established the claims and prayers which are hereby granted.

The claimant being successful he is awarded costs of the suit fixed at **Kshs.30, 000.00** only.

In conclusion judgment is hereby entered for the claimant against the 1st respondent for the payment of **Kshs.217, 403.50** by 15.09.2019 failing interest to be payable thereon at Court rates from the date of filing the suit till full payment.

**Signed, dated and delivered** in court at **Nairobi** this **Wednesday 31<sup>st</sup> July, 2019.**

**BYRAM ONGAYA**

**JUDGE**