



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 287 OF 2018

BETWEEN

LIYERSON MWAUFUE MWASHIMBA alias

LIVERSON MWAUFUE MWASHIMBA.....CLAIMANT

VERSUS

RADAR SECURITY LIMITED alias RADAR LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

E.W. Munyari & Company Advocates for the Claimant

Mercy W. Mwaura Advocate for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 2nd May 2018. He avers, he was employed by the Respondent on 7th November 2014, as a Training Officer, on a monthly salary of Kshs. 14,424. His contract was terminated on 30th November 2016 without notice or lawful cause. He prays for Judgment against the Respondent for:-

- a) 1 month salary in lieu of notice at Kshs. 14,424.
- b) 12 months' salary in compensation for unfair termination at Kshs. 173,088
- c) Accrued annual leave at Kshs. 35,339.

Total.....Kshs. 207,706.

- d) Costs and Interest.

2. The Respondent filed its Memorandum of Appearance on 2nd July 2018, through Mercy W. Mwaura, Advocate.

3. No Statement of Response was filed within 21 days from the date of service of the Statement of Claim, as required under Rule 13(1) of the E&LRC (Procedure) Rules 2016.

4. The Claim was scheduled for formal proof on 30th October 2018, and rescheduled to 12th February 2019.

5. The Respondent, without the leave of the Court, filed a Statement of Response on 30th October 2018.

6. The Respondent and its Advocates did not attend Court on any date despite having been notified by the Claimant, as shown in various Affidavits of Service, on record.

7. Hearing proceeded on 12th February 2019, in the absence of the Respondent. The Court ordered proceedings closed at the end of Claimant's evidence, with Parties to file and exchange their Closing Submissions within 14 days. The Respondent was served with Claimant's Submissions and Mention Notice, but neither attended Court, nor filed any Submissions.

8. The Claimant restated the contents of his Pleadings, in his testimony before the Court. He was told to go home on 30th November 2016 by the Administration Manager Rita Mwalimo, because work had diminished. He would be recalled when business made an upturn. He was not recalled. He followed up with the Respondent the whole of the year 2017. Nothing changed, compelling him to file this Claim. He urges the Court to grant the Claim.

The Court Finds:-

9. The Respondent has failed to participate in the proceedings of the Court.

10. The Statement of Response on record was filed way out of time, without the leave of the Court and when the date for formal proof had already been assigned.

11. The Respondent did not attend Court on any occasion, though notified to do so by the Claimant at every turn.

12. *The Statement of Response filed by the Respondent on 30th October 2018 is improperly on record, and is hereby expunged from the record.*

13. The Court is persuaded that the Claimant was sent away by the Respondent on 30th November 2016, on the ground that the Respondent had experienced a business downturn, and on the promise that the Claimant would be called back, once the business started to look up. He was not recalled, and spent the whole of the year 2017, making fruitless enquiries from the Respondent, on his resumption date. He was not given notice. There was no letter of termination issued to the Claimant, with or without reasons justifying termination. The Respondent has not exhibited before the Court, any records of Claimant's annual leave, to contradict his evidence, that he never went on annual leave for the whole period of employment. Termination was unfair and unlawful.

IT IS ORDERED:-

a) The Claim is granted as prayed, at kshs. 207,706.

b) Costs to the Claimant.

c) Interest allowed at 14% per annum from the date of Judgment till payment is satisfied in full.

Dated and delivered at Mombasa this 31st day of July 2019.

James Rika

Judge