



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT MOMBASA

CAUSE NO. 569 OF 2015

BETWEEN

GABRIEL KAHINDI KENGA.....CLAIMANT

VERSUS

ANGLO DANISH (FOODS) LIMITED..... RESPONDENT

Rika J.

Court Assistant: Benjamin Kombe

Munee Katu & Associates Co. Advocates for the Claimant

Kamoti Omollo & Company Advocates for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 10th August 2015. He states, he was employed by the Respondent on 1st November 2011, as a Cleaner. The Respondent engages in foodstuff business.

2. The Claimant was sent away on unpaid leave by the Respondent, on 30th July 2014. He reported back on 1st December 2014, but was not assigned any work. He considered his contract to have been terminated. He prays the Court to find termination was unfair and order the Respondent to pay to him:-

- a) 1 month salary in lieu after notice at Kshs. 11,248.
- b) Salary for August, September, October, November 2014 at Kshs. 44,992.
- c) Service pay at 15 days' salary over a period of 2 years worked at Kshs. 16,872.
- d) Underpayment of salary from 1st November 2011 to 30th July 2014, under the various Legal Notices, at a total of Kshs. 29,437.
- e) 12 months' salary in compensation for unfair termination at Kshs. 134,977

Total.....Kshs. 237,527/=

f) Certificate of Service to issue.

g) Costs and Interest.

3. The Respondent entered appearance on 27th August 2015. There is no Statement of Response on record. There are 3 Statements of Witnesses filed by the Respondent on 26th September 2016.

4. The Claim was fixed for mention on various dates – 6th October 2015, 1st July 2016, 29th September 2016, 29th November 2017, 14th

February 2018 and 20th June 2019. The Respondent did not attend Court on any occasion. It was fixed for hearing on 4th March 2019 with the consent of Parties' Advocates. The Respondent did not attend Court on 4th March 2019.

5. The Claimant gave evidence, and hearing closed on 4th March 2019, in the absence of the Respondent. The matter was mentioned on 22nd March 2019, when the Claimant confirmed to have filed his Closing Submissions. The Respondent requested for and was granted an extension of 7 days to file and serve its Closing Submissions. The last mention was on 20th June 2019, when it was confirmed that the Respondent did not file any Submissions.

6. The Claimant, in his testimony, restated the contents of his Pleadings. He adopted his documents, listed No. 1 to 7, as exhibits. He similarly adopted his Witness Statement, as his evidence in chief.

The Court Finds:-

7. There is no evidence, to challenge the evidence presented by the Claimant.

8. He has, through the exhibited Regulation of Wages (General) (Amendment) Orders, covering his period of employment, shown that he was underpaid, and merits the prayer for underpayment of salary.

9. He has, through the letter dated 30th July 2014, shown he was placed on unpaid leave by the Respondent, commencing 1st August 2014. He was to resume on 30th November 2014. Unpaid leave was ostensibly given, on the ground that the Respondent had experienced low business. When the Claimant reported back, he was told by Fatuma, the Director's wife, that there was no more work for him.

10. The Respondent did not prove valid reason justifying termination under Sections 43 and 45 of the Employment Act.

11. The Claimant has established his prayers for notice, unpaid salary, service pay, underpayment of salary, compensation and certificate of service. He is granted also, the prayers for costs and interest.

IN SUM, IT IS ORDERED:-

a) It is declared that termination was unfair.

b) The Respondent shall pay the total amount of Kshs. 237,527.

c) Certificate of Service to issue.

d) Costs to the Claimant.

e) Interest allowed at the rate of 14% per annum from the date of Judgment till payment is made in full.

Dated and delivered at Mombasa this 29th day of July 2019.

James Rika

Judge