



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 27 OF 2015

ABDI MAULID ADEN.....CLAIMANT

v

ELEGANT OCCASIONS LIMITED.....RESPONDENT

JUDGMENT

1. Abdi Maulid Aden (Claimant) instituted legal proceedings against Elegant Occasions Ltd (Respondent) alleging *wrongful dismissal* and *breach of contract*.
2. In its *Response*, the Respondent contended that the dismissal of the Claimant was justified. Breach of contract was denied.
3. On 12 February 2019, the Claimant had the Cause fixed for hearing on 5 April 2019.
4. According to an affidavit of service filed in Court on the morning of the hearing, the Respondent's advocate on record, Alex Kibunja & Associates Advocates acknowledged service under protest on 1 April 2019.
5. Despite acknowledging service under protest, the said firm of advocates did not bother to arrange for representation during the hearing to explain why it could not proceed with the hearing (or to seek adjournment). The Court therefore allowed the hearing to proceed.
6. The Claimant testified and filed submissions on 10 April 2019 (the Claimant adopted his filed written witness statement as part of his evidence).
7. The Court has considered the pleadings, evidence on record and the submissions.

Wrongful dismissal

8. The Claimant was employed by the Respondent as a Site Manager around 28 February 2010. He testified that he also served as a driver.
9. On the circumstances leading to separation, the Claimant's unchallenged testimony was that on 4 January 2015 when he reported to work, a Jane Kimani took the vehicle keys from him and directed him to leave, never to return and that no reasons were given.
10. Pursuant to the *probationary period and termination* clause of the letter of employment dated 5 November 2010, any of the parties was required to give 1 month notice of termination.
11. The evidence on record being that no such notice was given, the Court finds that there was *wrongful dismissal*.
12. The Court will in the circumstances allow the payment of 1 month salary in lieu of notice, and the equivalent of 5 months gross salary as compensation in consideration of the Claimant's 5 years length of service (basic salary at separation was Kshs 17,000/-).

Breach of contract/statute

Salary for January 2015

13. The Claimant sought Kshs 2,615/- being earned wages for 4 days worked in January 2015, and there being on rebuttal, the Court allows the head of claim.

House allowance

14. On account of house allowance, the Claimant quantified the claim as Kshs 174,000/-.
15. The Claimant contended that the salary he was earning did not include house allowance.
16. The Respondent in resisting the head of claim had pleaded that the salary paid to the Claimant was consolidated and included house allowance.
17. The Court has looked at the letter of employment.
18. It provided for payment of Kshs 3,000/- as house allowance as a separate benefit. If there was another contract varying the provision to consolidate the remuneration, it was not filed/produced in Court.
19. The Claimant produced 2 copies of pay slips which did not show particulars of house allowance, and the Court is satisfied on a balance that house allowance was not paid as provided for in the contract.

Gratuity

20. The contract did not provide for payment of gratuity. If by gratuity the Claimant meant *service pay* in terms of section 35(5) of the Employment Act, 2007, he would not qualify as the copies of pay slip filed in Court show deductions towards National Social Security Fund.

Leave for 4 years

21. Section 28(4) of the Employment Act, 2007 circumscribes the length of annual leave which can be carried forward.
22. The Claimant did not disclose whether he sought for leave and was denied and in the circumstances, the Court declines to find breach of contract in respect of leave.

Salary as driver

23. The Claimant's duties included *collection of items from site, checking the condition of equipment... site supervision and performance of extra duties*.
24. The Court is therefore unable to find, on the basis of the evidence on record that Claimant was entitled to pay as a driver in addition to his duties. The allocation of a vehicle most probably was to facilitate in the performance of duties.

Certificate of Service

25. A *certificate of service* is a statutory entitlement and the Respondent should issue one to the Claimant within 15 days.

Conclusion and Orders

26. The Court finds and declares that the Claimant's employment was wrongfully terminated and awards him

(a) Salary in lieu of notice	Kshs 17,000/-
(b) Compensation	Kshs 85,000/-
(c) House allowance	Kshs 174,000/-
(c) Salary January 2015	Kshs 2,615/-
TOTAL	Kshs 278,615/-

27. Respondent to issue to Claimant certificate of service within 15 days.
28. Claimant to have costs on half scale.

Delivered, dated and signed in Nairobi on this 12th day of July 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr. Khalwale instructed by Khalwale & Co. Advocates

For Respondent Alex Kibunja & Associates, Advocates

Court Assistant Lindsey