



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1373 OF 2016

FRANCIS ASEYO BULUKU.....CLAIMANT

- VERSUS -

MANJIT SINCH DHADIALLA.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 12th July, 2019)

JUDGMENT

The claimant filed the memorandum of claim on 14.07.2016 through Wilfred K. Babu & Co. Advocates. The claimant prayed for judgment against the respondent for:

- a) Declaration that in the manner in which respondent terminated claimant's services was inhuman and unprocedural.
- b) Declaration that withheld claimant's dues by the respondent amounts to unfair termination as per section 45(4) (b) of the Employment Act.
- c) The claimant be compensated 12 months' salary Kshs. 134, 988.00 for unfair termination.
- d) Declaration that the manner respondent treated the claimant and sent him at home without dues after being served with resignation letter, equality was not adhered by the meaning of section 45(4) (b) of the Employment Act.
- e) Declaration that withheld of claimant's underpayment dues and house allowance amounts to violation of section 25 of the Employment Act, 2007 and in breach of contract.
- f) In the alternative and without prejudice to the above claimant be paid in full his terminal benefits being one month pay in lieu of notice, salary of August 2014 (claimant's leave), service pay for 14 years, house allowance, leave travel allowance throughout service, holidays pay for 18 years, underpayments and 12 months' salaries in compensation amounting to Kshs. 556, 293.88.
- g) That the Court do issue orders as it may deem fit and adjust to grant.
- h) The costs.
- i) Interest from the date of filing the suit.

The respondent entered appearance on 11.08.2016 through Churchill Midwa & Company Advocates but filed no defence. Despite service the respondent failed to attend the hearing. The claimant testified to support his case.

The claimant testified that the respondent employed him on 01.06.1994 as a houseboy or house help. The employment was oral but payslips were issued. The claimant addressed to the respondent the letter dated 01.08.2014 notifying that he was resigning from the respondent's employment on account of some domestic problem. The claimant appreciated the good relationship between the parties throughout the employment period. The claimant hoped that the respondent would accept the letter and pay the terminal dues. The claimant testified that a month after resigning the respondent summoned him and told him never to step at the respondent's home. The claimant testified that he was paid up to the last day he worked.

The Court considers that the claimant voluntarily resigned from employment and the allegations of unfair termination are unfounded. The termination or separation of the parties was by agreement in view of the claimant's resignation.

The Court further returns that the prayers on underpayment, house allowance, NSSF dues, holiday pay, untaken and unpaid leave, and leave travelling allowances were all continuing injuries whose cause of action accrued on 01.08.2014 when the claimant resigned and the continuing injuries ceased. Accordingly the cause of action was time barred as the suit was filed on 14.07.2016 long after the lapsing of the 12 months of limitation of action under section 90 of the Employment Act, 2007.

In conclusion, the claimant's suit is hereby dismissed with no orders on costs.

Signed, dated and delivered in court at **Nairobi** this **Friday 12th July, 2019**.

BYRAM ONGAYA

JUDGE