



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

ELRC CAUSE 674 OF 2015

(Before Hon. Justice Hellen S. Wasilwa on 10th July, 2019)

JACOB OCHIENG MALOWA.....CLAIMANT

VERSUS

LOAD TRAILERS (E.A) LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant herein filed a Statement of Claim dated and filed in Court on 23rd April, 2015, in which he seeks compensation for unfair and unlawful termination of his employment by the Respondent herein. He states that he was employed by the Respondent on or about 23rd June, 2014 as a painter earning a monthly salary of Kenya Shillings Fifteen Thousand Only.
2. The Claimant further contends that his employment with the Respondent was confirmed when he signed the contract on 30th September, 2014 after successfully completing 3 months' probation period.
3. The Claimant avers that on 29th March, 2015 he called his immediate supervisor one Justus Mailu and informed him that he was attending to a sick child. He was allowed to proceed and the supervisor promised to inform the management of his predicament.
4. The Claimant further avers that when he resumed duty on 1st April, 2015 he was denied access to his place of work and only to be informed at the accounts department that his services had been summarily dismissed and was asked to clear with the Respondent handing over any company property in his possession. He further contends that he was then paid Kshs. 3,518/- as terminal dues at the time of separation.
5. The Claimant contends that his termination was unfair for the reason that he was not issued with a warning letter or any warning at all, no termination letter was issued and that prior to his termination he was not accorded any disciplinary hearing, if necessary for him to have an opportunity to defend himself.
6. In his Statement of Claim the Claimant prays for the following:-

a) A declaration that the Respondent's action in dismissing the Claimant from employment was unlawful and unfair.

b) The Sum of Kshs. 210,750 as particularised below:

i. House Allowance (15% of basic pay)

September 2014-March 2015 Kshs. 15,750

ii. 1 month Salary in lieu of notice Kshs. 15,000

iii. 12 months compensation Kshs. 180,000

Total Kshs. 210,750

c) Certificate of Service

d) Costs of the Suit

e) Interest on the amount awarded at Court rates

7. The Respondent despite being served with the summons as well as the Statement of Claim herein failed to enter Appearance or file an appropriate Response to the Claim. The matter was subsequently certified ready to proceed as an undefended Claim and the Claimant directed to fix the matter for hearing.

8. On the hearing date on 25th April, 2019 the matter proceeded with the Claimant, CW1 testifying on his behalf.

9. The Claimant adopted his witness statement dated 23rd April, 2019 and filed in Court on 24th April, 2019 as his evidence in chief. In his statement, the Claimant reiterates the averments made in his statement of Claim.

10. The Claimant urged the Court to allow the Claim as drawn.

Claimant's Submissions

11. It is submitted by the Claimant that his termination was unlawful and unfair as he had sought permission from the Respondent to be away from work which permission was duly granted by his supervisor.

12. The Claimant further submits that his termination fails both substantive and procedural fairness test and relied on the findings in the case of **David Gichana Omuya Vs Mombasa Maize Millers Limited (2014) eKLR.**

13. The Claimant further submitted that he is entitled to the reliefs as sought in his Statement of Claim and urged this Honourable Court to allow the same as prayed.

14. I have examined all the evidence and submissions of the Claimant herein. The Claim proceeded undefended and basically the Claimant's case remains undisturbed. The Claimant has through his evidence and documents proved that he worked for the Respondent through the bank statement showing periodic payment of his salary at DPC Wages.

15. The Claimant indicated he was dismissed by the Respondent when he reported to work after attending to a sick child. There was no evidence to the contrary to that there were any valid reasons to warrant his dismissal. There is also no evidence that due process was carried out before the dismissal.

16. It is my finding therefore that the dismissal of the Claimant was unfair and unjustified.

17. In terms of remedies, I find for the Claimant and I award him as follows:-

1 month salary in lieu of notice = 15,000/=

1. House allowance at 15% of his salary for 7 months = 15,750/=

2. 8 months' salary as compensation for the unfair and unjustified dismissal = 8 x 15,000= 120,000/=

TOTAL = 150,750/=

3. Issuance of Certificate of Service

4. The Respondent will pay costs of this suit plus interest at Court rates with effect from the date of this judgement.

Dated and delivered in open Court this 10th day of July, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Njoroge holding brief Gomba for Claimant - Present

Respondent – Absent