



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

CAUSE NUMBER 352 OF 2018

BETWEEN

CHRISTOPHER KYALO MUTIKU.....CLAIMANT

VERSUS

SCHOLASTICA AJODE T/A SKAJO AIRLINE HANDLING AGENCY.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Jackson Muchiri & Company Advocate for the Claimant

No appearance for the Respondent

JUDGMENT

1. This Claim was heard by way of formal proof, on 11th June 2019. There is an Affidavit of Service filed by Process- Server Titus Munyao Nyenge, indicating Notice of Summons was served on the Respondent on 8th August 2018.

2. Through his Statement of Claim filed on 30th May 2018, the Claimant states he was employed by the Respondent in August 2007 as Cargo Export/Import Supervisor.

3. He received a letter dated 7th September 2016 from the Respondent, placing him on unpaid leave, on the ground that Respondent's business had diminished. His salary at the time was Kshs. 30,000 monthly. There was no communication from the Respondent thereafter, either terminating the Claimant's contract, or instructing him to resume duty. The Claimant understood the silence to mean his contract had been terminated. He therefore filed this Claim, seeking Judgment against the Respondent for:-

- a) 1 month salary in lieu of notice at Kshs. 30,000.
- b) Salary for 13 days worked in September 2016 at Kshs. 13,000.
- c) 12 months' salary in compensation for unfair termination at Kshs. 360,000.
- d) Service pay at Kshs. 135,000.
- e) Certificate of Service to issue.
- f) Costs and Interest.

4. The Claimant restated the contents of his Statements of Claim and in his brief testimony, on 5th July 2019. He adopted as exhibits, his letter of appointment dated 24th July 2007; letter dated 7th September 2016 sending him on unpaid leave; demand letter issued upon the Respondent by his Advocate; and the full contract of employment executed by the Parties on 27th July 2007.

The Court Finds:-

5. The Claim is uncontested.

6. The Claimant was placed on unpaid leave on 7th September 2016. He merits 7 days' salary for work done in September 2016, not 13 days' salary. **He is granted 7 days' salary at Kshs. 8,076.**

7. His contract was effective 1st August 2007. He left employment 7th September 2016. He had 9 complete years of service. The Respondent did not give evidence to show that the Claimant was subscribed to the N.S.S.F or any other Social Security Plan, to be ineligible for service pay, under Section 35 of the Employment Act. **He is granted service pay at 15 days' salary, for 9 complete years of service, at Kshs. 155,769.**

8. Termination was not explicit. The Claimant was placed on indefinite and unpaid leave. He was not told when to resume. He was not given any information by the Respondent on his status, after he was sent on unpaid leave. He was not recalled and did not receive any letter of termination. He was left dangling in the wind. He had worked for 9 years. He did not have any role in circumstances leading to his departure. His employment record has not been faulted. His contract entitled him to go on working until he turned 55 years. He unfortunately did not disclose how old he was at the time of exit. He also did not tell the Court if he made an effort to secure alternative work and mitigate loss of employment. **The Court grants him, equivalent of 8 ½ months' salary in compensation for unfair termination at Kshs. 255,000.**

9. **The prayer for notice pay is allowed at Kshs. 30,000.**

10. **Certificate of Service to issue.**

11. **Costs to the Claimant.**

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

IN SUM, IT IS ORDERED:-

a) The Respondent shall pay to the Claimant: 7 days' salary at Kshs. 8,076; service pay at Kshs. 155,769; compensation for unfair termination at Kshs. 255,000; and notice pay at Kshs. 30,000- total Kshs. 448,845.

b) Certificate of Service to issue.

c) Costs to the Claimant.

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

Dated and delivered at Mombasa this 26th day of September 2019.

James Rika

Judge