



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE 1988 OF 2016

(Before Hon. Lady Justice Hellen S. Wasilwa on 18th September 2019)

CHARLES MUKANGI VILEMBWA.....CLAIMANT

VERSUS

PETER BONDE NELSON

T/A OLDONYO LARO ESTATE LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant, Charles Mukangi Vilembwa, filed a Memorandum of Claim dated 30/08/2016 and the court allowed his application to file his Amended Memorandum of Claim dated 11/04/2017 against the Respondent, Oldonyo Laro Estate Limited.

2. He avers that on or about April 2000 he was employed as a House Keeper by the Respondent at a monthly salary of Kshs. 26,165/= and that he was issued with an appointment letter to that effect. That he served the Respondent with diligence and loyalty for 15 years until 11/03/2015 when the Respondent wrongfully and unlawfully terminated his services and that it also failed to pay him his terminal dues as tabulated below:-

<i>a. One month's pay in lieu of notice</i>	<i>Kshs. 26,165.00</i>
<i>b. Annual leave for 2 years (26,165/30 x 2)</i>	<i>Kshs. 36,631.00</i>
<i>c. Housing Allowance @15% on the basic (26,165/30 x 15% x 12 x 15years)</i>	<i>Kshs. 706,500.00</i>
<i>d. Compensation for unfair termination equivalent to 12 months' salary (26,165 x 12)</i>	<i>Kshs. 313,980.00</i>
TOTAL	<i>Kshs.1,083,276.00</i>

3. He avers that intention to sue has been given but the Respondent has refused to make good the situation and submits that the Respondent contravened **Sections 41 and 44(3) and (4) of the Employment Act** by summarily dismissing him without procedure. He prays that this Honourable Court award as follows:-

- (i) The sum of Kshs. 1,083,276.00 as particularised in paragraph 5 of the Claim inclusive of compensation for wrongful dismissal to a maximum of 12 months wages.*
- (ii) Costs of this suit.*
- (iii) Interest in (i) and (ii) above.*
- (iv) Certificate of Service.*

(v) Any other relief as the Court may deem just.

4. The Claimant also filed his Amended Statement on 11/04/2017 stating that the Respondent summarily terminated his services without informing him the reasons for the termination. That when he went to work on the morning of 11/03/2015, the Director of the Respondent Company told him the workload was low and that he would communicate to him on how he would be given his terminal dues.

5. That when the attempts to cause the said director to pay his dues failed, he visited the offices of Kituo Cha Sheria and registered his complaints and that a demand letter was issued to the Respondent which he personally delivered to them.

6. That when the demand notice period expired, he went to check for a response at the Kituo Cha Sheria but was informed there was no reply, hence this suit. The Claimant's Amended List of Documents include his employment contract dated 26/02/2009; recommendation letter dated 15/01/2015; letter from the Registrar of Companies dated 07/02/2017; and a demand letter dated 24/05/2015.

Evidence

7. CW1, the Claimant testified in court that he used to work from Monday to Saturday and that one Wednesday while at work, he was called and told at the parking that work had reduced and he could not keep working for him. That he was told he would be paid for the services but the Respondent never paid him and went quiet and that Kituo Cha Sheria assisted him to bring this case to Court.

8. This claim proceeded ex parte after the Respondent failed to attend Court or file any Response after service.

9. I have considered the averments of the Claimant, which remain uncontroverted.

10. The Claimant established that he worked for the Respondent but it is not clear how the contract was terminated. He averred he was terminated without due process and without valid reason, which is against Section 45 (2) of Employment Act.

11. I find Claimant has established his claim as expected by law. I find for the Claimant and I award him as follows:-

1. 1 months' salary in lieu of notice = 26,165/=

2. Annual leave for 2 years = 36,631

3. Compensation of 8 months' salary for unlawful termination = 8 x 26,165 = 209,320

Total = 272,116/=

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 18th day of September, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Claimant – Present

Respondent – Absent