



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 1821 OF 2015

JAMES MWENDA KINOTI..... CLAIMANT

VERSUS

SAMEER AGRICULTURE & LIVESTOCK KENYA LIMITED.... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 25th October, 2019)

JUDGMENT

The claimant filed the statement of claim on 12.10.2015 through Kiruki & Kayika Advocates. The claimant prayed for judgment against the respondent for:

- a. A declaration that the respondent's dismissal of the claimant from his employment was unlawful, unfair and hence null and void.
- b. The respondent to pay the claimant as follows:
 - i. Unpaid salary for unexpired period Kshs.80, 000.00.
 - ii. Pay in lieu of notice Kshs.20, 000.00.
 - iii. Unpaid leave Kshs.20, 000.00.
 - iv. Unpaid overtime of 864 hours Kshs.134, 784.00.
 - v. Damages for unfair dismissal at 4 months' gross salary Kshs. 80, 000.00.
 - vi. Total claim Kshs. 334, 784.00.
- c. Interest at Court rates.
- d. Costs of the suit.
- e. Such other or further relief as the Honourable Court may deem just to grant.

The respondent filed on 25.11.2015 a reply to the statement of claim through Khalwale & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs.

There is no dispute that the claimant worked for the respondent from 15.09.2014 to August 2015. The employment was for 15 months as per the letter of appointment dated 12.09.2014 and effective 15.09.2015. The position was as Sales Representative. The working hours were as laid down by the Company.

The claimant's case is that on 17.08.2015 he reported at work as usual but he was advised not to come to work until further notice. He was not given a reason for that decision. On 21.08.2015 he was given a certificate of service together with a recommendation letter showing that he was a good worker, hardworking and reliable. He says the termination was unfair for want of a notice and hearing as well as valid reasons.

The respondent's case is that the claimant worked for 9 months and he had lied about his academic credentials and he orally admitted to that fact. The respondent had no option but to dismiss him. His case should therefore be dismissed.

The evidence is that the claimant served for 11 months from September 2014 to August 2015. The claimant testified that his contract could be terminated by one month notice or pay in lieu of notice.

The respondent's witness (RW) was Cedrick Lumidi, the Human Resource Manager. He testified that the claimant absconded duty after failing to explain the veracity of his KCPE certificate. He stated that he relied on information as he did not handle the case personally.

The Court has considered the evidence, which is for the part of the claimant, that no reason was given for his termination. RW's hearsay evidence is found to serve no useful purpose. There being no reason for termination given and as per the claimant's account, the termination is deemed to have been under the one month notice clause. The claimant is awarded one month pay in lieu of notice making **Kshs.20, 000.00**. His claims for unfair termination are found invalid because in absence of allegations of misconduct or poor performance as at the time of termination the claimant cannot validly urge a case that he legitimately anticipated a notice and a hearing in terms of section 41 of the Employment Act, 2007. The Court finds accordingly.

The evidence is that the respondent would set out the working hours and the payslips exhibited showed payment of overtime and the Court returns that the hours worked were for agreed pay and any overtime served was paid for. The prayer for overtime will therefore fail.

In terms of section 28 of the Act, leave would have fallen due had the agreed notice been served and the claimant is awarded **Kshs.20, 000.00** in lieu of annual leave.

The claimant is not entitled to pay for unexpired term of contract because nothing was established as attributable to the respondent that barred the claimant from mitigating his circumstances by engaging in alternative gainful activities or employment.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- a. The respondent to pay the claimant a sum of **Kshs.40, 000.00** by 01.12.2019 failing interest to be payable thereon at Court rates from the date of filing the suit.
- b. The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at **Nairobi** this **Friday, 25th October, 2019**.

BYRAM ONGAYA

JUDGE