



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1920 OF 2015

NOOR MOHAMED.....CLAIMANT

v

DYNAMIC CHEMICALS LIMITED.....RESPONDENT

JUDGMENT

1. Noor Mohamed (Claimant) instituted legal proceedings against Dynamic Chemicals Ltd (Respondent) alleging unfair termination of employment and breach of contract. He sought a total of Kshs 511,814/-.
2. The Respondent filed a *Response and Counterclaim* denying unfair termination of employment and breach of contract. No particulars of the Counterclaim were set out.
3. The Cause was heard on 11 July 2019. Despite service of hearing notice on 16 May 2019, the Respondent and its advocates on record did not attend the hearing.
4. The Claimant testified and filed his submissions on 29 July 2019. The Respondent did not file submissions.

Unfair termination of employment

5. The Claimant was employed as a security guard by the Starplast Ltd in 2011. He testified that Starplast Ltd changed its name to Dynamic Chemicals Ltd.
6. The Claimant testified that his employment was terminated on 5 February 2015 and that the termination was not preceded with a notice of termination or pay in lieu of notice. He also stated that no reasons were offered (he produced a copy of the letter of termination of employment and a recommendation letter).
7. The Claimant's testimony was not interrogated (or rebutted as Respondent did not attend the hearing) and the Court will accept it as correct.
8. The Court has looked at a *To Whom It May Concern* letter issued to the Claimant on the date of termination and it gave the reason for separation as retrenchment.
9. The Court will also accept that the separation was on account of redundancy.
10. There was no evidence or documentation filed in Court to show that the conditions set out in section 40(1) of the Employment Act, 2007 were complied with by the Respondent (written notification one month in advance to the Claimant and Labour Office or selection criteria).
11. The Respondent failed to attend Court to discharge the burden required of it by sections 43 and 45 of the Employment Act, 2007.
12. The Court, therefore, concludes that the termination of the Claimant's employment on account of redundancy was unfair.

Compensation

13. The Claimant served the Respondent for about 4 years and considering the length of service, the Court is of the view that the equivalent of 4 months gross wages as compensation would be appropriate (gross wage in December 2014 was Kshs 12,549/-).

Pay in lieu of notice

14. The Respondent did not give the Claimant the requisite notice and the Court holds that the Claimant is entitled to 1 month pay in lieu of notice (basic wage as of December 2014 was Kshs 10,912/-).

Breach of contract

Overtime

15. The Claimant alleged he worked overtime without remuneration from January 2014 to January 2015 and he sought a total of Kshs 336,128/-.

16. The averments by the Claimant on the working hours were not specifically traversed in the *Response*. The Claimant's oral testimony in Court remained unrebutted, and the Court will allow the head of claim.

Untaken leave

17. Annual leave of at least 21 days is a statutory minimum.

18. The Claimant sought Kshs 12,549/- on account of leave for 2011. The Claimant did not disclose whether he sought for the leave and was denied to show a breach of contract on the part of the Respondent.

19. The Court also is of the view that this head of claim is caught up by the provisions of sections 28(4) and 90 of the Employment Act, 2007.

Conclusion and Orders

20. The Court finds and holds that the termination of the Claimant's employment on account of redundancy was unfair and that the Respondent was in breach of contract/statute.

21. The Court awards the Claimant

(a) Compensation	Kshs 50,196/-
(b) Pay in lieu of notice	Kshs 10,912/-
(c) Overtime	Kshs 336,128/-
TOTAL	Kshs 397,236/-

22. Claimant to have costs on half scale.

Delivered, signed and dated in Nairobi on this 7th day of October 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr Mukeli instructed by Namada & Co. Advocates

For Respondent Liko & Anam Advocates

Court Assistant Lindsey