



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 367 OF 2017

(Before Hon. Justice Mathews N. Nduma)

SHADRACK MUTHWII KIMATU.....1ST CLAIMANT

VERSUS

CACTIC INTERNATIONAL ENGINEERING CORPORATION.....1ST RESPONDENT

CHINA NATIONAL AERO-TECHNOLOGY

INTERNATIONAL ENGINEERING CORPORATION.....2ND RESPONDENT

JUDGMENT

1. The claimant prays for maximum compensation for unlawful and unfair dismissal from employment and payment of one month salary in lieu of notice. The claimant testified under oath that he was employed by the 1st respondent on or about April 2013. That the 1st respondent has since changed its name to the name cited as the 2nd respondent. That the claimant worked as a General Worker earning a daily salary of Kshs. 420 per day which translated to Kshs. 12,600 per month. That the daily salary increased to Kshs. 530 which translates to Kshs. 15,600 per month.
2. That the claimant worked diligently until 9th March 2016, at about 4.30 p.m when he was going home together with 5 colleagues and they were called by their supervisor Mr. Mar who informed them that their employment had been terminated. The supervisor explained that he had been given instructions to reduce the number of employees in the company since the work load had reduced and the company needed fewer employees.
3. The claimants were only paid for days worked and no terminal benefits were paid to them. The claimant prays to be awarded as prayed.
4. The respondent did not enter appearance nor did it file a defence to the suit. The matter is undefended.
5. From the testimony by the claimant, this is a case of retrenchment under Section 40 of the Employment Act, 2007. The claimant having worked for over two (2) years was protected by the minimum terms in parts IV, V and VI of the Employment Act, 2007.
6. The claimant's employment could not be terminated without being given at least one month's salary in lieu of notice and/or being given one month termination notice to prepare himself for the loss of his source of income. This being an operational termination, the respondent was mandated to give at least one month notice to the ministry of labour in addition to the personal notice to the claimant. The respondent was also bound to pay at least 15 days salary for each completed year of service.
7. The respondent was bound to explain in a proper manner the reasons why the claimant had been selected for termination.
8. The respondent did not do any of the above and therefore the termination of employment of the claimant for operational reasons was procedurally flawed and therefore wrongful and unfair.
9. The court finds that the termination violated Sections 36, 40, 41(a) and 45 of the Employment Act, 2007. The claimant is entitled to compensation in terms of Sections 49(1) (c) and (4) of the Act.
10. In this regard, the claimant had served about three years. The claimant did not contribute to the termination. The claimant was not paid

any terminal benefits or compensation for the job loss. The claimant lost prospects of career development and suffered loss and damage. The claimant did not get gratuity contemplated under Section 40 of the Act nor was he given time to prepare for the transition. The claimant did not receive a certificate of service to enable him get a new job.

11. The court relies on the case of ***Bernard A. Kagesi vs For You Chance Restaurant (2014) eKLR*** in finding that the declaration of redundancy of the claimant was unlawful and he is awarded three (3) months salary in compensation for the unlawful and unfair termination in the sum of Kshs. 46,800.

12. The claimant is also awarded Kshs. 15,600 in lieu of one month notice. The claimant is entitled to severance pay equivalent to 15 days salary for each completed year of service in the sum of Kshs. 23,400.

13. In the final analysis judgment is entered in favour of the claimant against the 1st and 2nd respondents as follows:

(a) Kshs. 46,800 in compensation.

(b) Kshs. 15,600 being one month salary in lieu of notice.

(c) Kshs. 23,400 severance pay.

Total award Kshs. 85,800

(d) Interest at court rates from date of judgment till payment in full in respect of (a) above and from date of filing suit in respect of (b) and (c) above.

(e) Costs of the suit.

Dated and Signed in Kisumu this 14th day of November, 2019

Mathews N. Nduma

Judge

Delivered and signed in Nairobi this 22nd day of November, 2019

Maureen Onyango

Judge

Appearances

Mr. Gomba for claimant

Chrispo – Court Clerk