



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE 2156 OF 2017

(Before Hon. Lady Justice Maureen Onyango)

MOSES NDEREBA MAIGALLO.....CLAIMANT

VERSUS

TKM MAESTRO LIMITED.....1ST RESPONDENT

CHARLES MWITI MUGAMBI.....2ND RESPONDENT

DR. TONY MONDA.....3RD RESPONDENT

JUDGMENT

The Claimant filed a Statement of Claim on 31st October 2017 alleging that the termination of his employment on 12th June 2017 was unfair and unjust as there was no justifiable grounds to terminate his employment. He prays for –

- a) A declaration that the termination of employment by the Respondent herein was unjust and unfair.
- b) Maximum compensation of 12 months to be paid to the Claimant by the Respondent hereof.
- c) Pay in lieu of leave.
- d) Pay in lieu of notice (3 months).
- e) Service pay – one month's pay for every year served.
- f) Maximum compensation of 12 months hereof
- g) Non remitted NSSF dues
- h) Housing and leave allowances
- i) Unpaid statutory allowances
- j) Terminal benefits
- k) Certificate of service
- l) Any other or further relief that this Honourable Court may deem fit to grant
- m) Costs of this claim

The Respondent neither entered appearance nor filed a response to the claim. The Claim was canvassed by way of written submissions.

Claimant's case

The Claimant avers that vide a contract of employment dated 4th December 2008 he was employed by the Respondents as a project supervisor. He avers that he served the respondents diligently until 12th June 2017 when the Respondents terminated his employment. He avers that the termination was unfair and unjust as he exceeded his performance and there were no grounds to terminate his employment.

In his submissions, the Claimant argued that the termination was unlawful for reason that his appraisal was good and he performed his duties with a lot of dedication as a Site Supervisor. He submitted that the termination amounted to unfair termination under Section 49 of the Employment Act.

He further submitted that the Respondents contravened sections 41, 44 and 45 of the Employment Act. In support of this position he relied on the cases of *Gilbert Mariera Makori v Equity Bank Limited [2016] eKLR* and *Mary Chemweno Kiptui v Kenya Pipeline Company Limited [2014] eKLR*.

He submitted that he was entitled to an improved salary of Kshs.60,000 effective 1s February 2013 and that his salary arrears amount to Kshs.604,500 as confirmed in the email dated 25th June 2014. He further submitted that the Company directors have a statutory duty to pay salaries.

Determination

The respondent though served did not enter appearance or file a defence. When the matter came up on 30th April 2019, the claimant opted to proceed by way of written submissions. In the claimant's pleadings, he has only made general prayers. Having not testified in court, the prayers have not been proved and are dismissed for want of proof.

The respondent however admitted and offered to pay Kshs.604,500 to the claimant by email dated 25th June 2014 on account of arrears of salary.

I thus enter judgment for the claimant against the respondents jointly and severally for the admitted sum of Kshs.604,500/=. The respondent shall pay claimant's costs and decretal sum shall attract interest at court rates from date of judgment.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 7TH DAY OF NOVEMBER 2019

MAUREEN ONYANGO

JUDGE