



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1486 OF 2016

PATRICK GICHOMBI GAKOMBE.....CLAIMANT

-VERSUS-

H. YOUNG & COMPANY LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 1st November, 2019)

JUDGMENT

The memorandum of claim was filed on 29.07.2016 through Samuel Nyambane & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) A declaration that the sacking of the claimant is illegal and unlawful and the respondent to pay the claimant Kshs. 896, 266.53 being:
- i. Certificate of service.
 - ii. Unpaid salary Kshs.51, 345.00.
 - iii. 2 months' salary in lieu of notice Kshs.65, 576.00.
 - iv. Service pay for each year served Kshs.225, 102.23.
 - v. Leave pay for years served Kshs.160, 787.30.
 - vi. General damages for wrongful dismissal Kshs.393, 465.00.
 - vii. Total Kshs. 896, 266.53.
- b) General damages for wrongful dismissal as the Court shall assess.
- c) Costs of the suit and interest.
- d) Any other relief the Honourable Court may deem fit and just to grant

The claimant's case is that he was employed by the respondent for 8.5 years until 07.11.2015 when the respondent unilaterally and without reasonable cause or justification sacked him from employment. The claimant says he was not given a notice, a hearing and due process.

The respondent filed the reply to the memorandum of claim on 30.08.2016 through Wangoko & Gitonga Advocates. The respondent confirmed that it employed the claimant as a personal driver on a monthly salary of Kshs.32, 788.00 inclusive the house allowance. The respondent prayed for a declaration that the dismissal of the claimant was above board and should stand and, the case should be dismissed with costs. The respondent changed its advocates to Wangoko & Company Advocates effective 13.03.2019.

The claimant testified to support his case. He stated that his monthly salary was Kshs. 35, 790 as a driver. The net pay was Kshs. 32, 788.00.

The letter of termination of employment was dated 07.11.2015 and it stated that termination was effective 07.11.2015 and final dues included salary up to 07.11.2015; notice pay; outstanding leave days; less any company liability. The claimant's gross terminal dues were Kshs.206, 877.00 and a net pay of Kshs.38, 740.00. The claimant testified that he accepted the terms of the letter of termination but subsequently he

differed with the respondent on the final dues. He filed the present suit. The respondent failed to attend at the hearing and did not call a witness to testify.

The Court has considered the claimant's evidence. It is that he accepted the terms of the letter of termination. Accordingly the Court returns that allegations of unfair termination were unfounded and the prayers and claims in that regard will collapse.

As submitted for the respondent, the claimant was a member of NSSF and is not entitled to service pay under section 35 of the Employment Act, 2007.

The material on record shows that the respondent paid the terminal dues as per the collective agreement and the terms of the letter of termination. The Court returns that the claimant has failed to give evidence to show that the respondent owes terminal dues. His case will fail. The Court has considered the parties' conduct in the matter and margin of success and returns that each party shall bear own costs.

In conclusion judgment is hereby entered for the respondent against the claimant for dismissal of the suit with orders each party to bear own costs of the suit; and the respondent to deliver a certificate of service per section 51 of the Act.

Signed, dated and delivered in court at Nairobi this Friday, 1st November, 2019.

BYRAM ONGAYA

JUDGE