



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

CAUSE NO. 2259 OF 2016

MESHACK OMUSE OMADEDE CLAIMANT

V

MAMBO EXPRESS COURIER LIMITED RESPONDENT

JUDGMENT

1. The Claimant instituted legal proceedings against the Respondent on 7 November 2016 alleging unfair termination of employment and breach of contract.
2. According to an affidavit of service filed in Court on 14 February 2017, the Respondent's Receptionist accepted service of *Notice of Summons* on 16 November 2017.
3. Despite the service, the Respondent did not enter *Appearance* or file a *Response*, and on 30 October 2017 Abuodha J ordered that the Cause proceeds to hearing as an undefended Cause.
4. The Cause was heard on 4 November 2019. The Claimant testified. He filed submissions on 13 November 2019.
5. The Court has considered the record and the submissions.

Unfair termination of employment

6. The Claimant's testimony that he was dismissed on 20 May 2016 by the Respondent's Manager without being issued with a *show-cause* or being afforded an opportunity to be heard remained un rebutted, and in consideration of the provisions of sections 35(1)(c) and 41 of the Employment Act, 2007, the Court finds that there was unfair termination of employment

Compensation

7. The Claimant served the Respondent from 5 October 2015 to 20 May 2016, slightly under one year.

8. In consideration of the brief length of service, the Court is of the view that the equivalent of 1-month salary as compensation would be fair (gross salary was Kshs 15,000/-).

Pay in lieu of notice

9. Since the Respondent did not issue a *written notice* as contemplated by section 35(1)(c) of the Employment Act, 2007, the Court will allow the equivalent of 1-month salary in lieu of notice.

Breach of contract/statute

Overtime

10. The Claimant sought Kshs 22,500/- on account of overtime. He stated that he worked from 10.00 am to 10.00 pm.

11. The contract provided the working hours from 7.30 am to 5.00 pm.

12. The Court finds that the Claimant worked for twelve hours per day instead of the agreed eight and a half hour and therefore this head of the claim is allowed.

Off duty

13. The Claimant's contract provided for 6 days of work in a week.

14. The Employment Act, 2007 provides for 1 rest day per week, and the Court in the circumstances finds no foundation or merit in this head of the claim.

May 2016 wages

15. The Claimant was dismissed on 20 May 2016 and is entitled as of right to the earned wages which he computed as Kshs 15,000/- which the Court will allow.

Pro-rata leave

16. All employees are entitled to at least 21 days of annual leave with full pay. The Respondent did not participate in the proceedings and without pay leave records, the head of claim is allowed as claimed in the sum of Kshs 12,115/-.

House allowance

17. The Claimant's contract provided for a basic salary without indication whether it was consolidated to include house allowance in terms of section 31 of the Employment Act, 2007.

18. Consequently, the Court allows this head of the claim as sought in the sum of Kshs 15,750/-.

Service pay

19. There was no evidence that the Claimant was a member of a pension scheme or was ineligible for *service pay* as envisaged by section 35(5) of the Employment Act, 2007, and the Court will grant the relief as pleaded.

Conclusion and Orders

20. The Court finds and declares that the termination of the Claimant's employment was unfair, and further that the Respondent was in breach of contract/statute and awards him

(a) Compensation	Kshs 15,000/-
(b) Pay in lieu of notice	Kshs 15,000/-
(c) <i>Pro-rata</i> leave	Kshs 12,115/-
(d) Overtime	Kshs 22,500/-
(e) May 2016 wages	Kshs 15,000/-
(f) Service pay	Kshs 8,653/-
(g) House allowance	Kshs 15,750/-
TOTAL	Kshs 104,018/-

21. Claimant to have costs on half scale.

Delivered, dated and signed in Nairobi on this 6th day of December 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr. Makhanu instructed by E Matundura & Co. Advocates

Respondent did not participate

Court Assistant Lindsey