



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 12 OF 2016
[CONSOLIDATED WITH CAUSE NUMBER 13 AND 14 BOTH OF 2016]

BETWEEN

- 1. HARUN NG'ANG'A**
- 2. STEPHEN WANJOHI [CAUSE NUMBER 13]**
- 3. ISAAC MBECHÉ [CAUSE NUMBER 14].....CLAIMANTS**

VERSUS

SIGNATURE TOURS & TRAVELS LIMITED.....RESPONDENT

RIKA J

Court Assistant: Benjamin Kombe

D.N.Omari & Company Advocates for the Claimants

No appearance for the Respondent

JUDGMENT

1. The 3 Claimants filed 3 separate Claims against their former Employer, as indicated above. The Claims were consolidated, to be heard and determined under Cause Number 12 of 2016.
2. The Claimants state they were employed by the Respondent as Drivers in April 2014. They earned salaries of Kshs. 18,000 monthly. Their respective contracts of employment were terminated by the Respondent on 15th September 2015, on the ground that due to diminished business, the Respondent could not sustain the employment of the Claimants.
3. They state termination was not based on valid reasons. They ask the Court to grant them Judgment against the Respondent for:-
 - a. Salary arrears from August 2015 at Kshs. 36,000.

- b. 2 months' salary in lieu of notice at Kshs. 36,000.
- c. House allowance at the rate of 15% of the basic salaries at Kshs. 64,800.
- d. Public holidays for 7 years at Kshs. 28,800.
- e. 12 months' salary in compensation for unfair termination at Kshs. 216,000

Total.....Kshs. 345,600

- f. Costs and interest.

4. The Respondent did not file Response to any of the Claims and did not participate in the proceedings. The Court ordered the Claims are considered and determined on the strength of the record. The Claimant confirmed the filing of his Submissions at the last mention in Court on 6th November 2017.

5. The Claimants submit they were employed in April 2014. They worked as Drivers, each earning a salary of Kshs. 18,000 monthly. Their contracts were terminated by the Respondent through a letter titled 'Redundancy,' dated 15th September 2015. The Respondent explained that due to reduced business, the Claimants' positions had been rendered redundant. They were instructed to return all Respondent's property in their possession, and would on clearance be paid August Salary, September Salary, Pro-rata annual leave, and 1 month salary in lieu of notice, all less statutory and contractual deductions. The Claimants submit the Respondent, in this letter, undertook to pay Claimants' dues, but did not pay.

The Court Finds:-

6. The Respondent has not replied to the respective Claims. Its letter to the Claimants dated 15th September 2015, gave redundancy as the reason why Claimants' contracts were terminated. It was alleged the Respondent experienced diminished business.

7. Without evidence from the Respondent, it cannot be said that the purported redundancy was a genuine ground justifying termination. It has not been shown that the Respondent experienced business downturn, to warrant terminating Claimants' contracts. The Respondent did not prove the reason for termination as required under Section 43 of the Employment Act 2007. If indeed there was a redundancy situation, the record does not show that the Respondent followed the procedure laid down in Section 40 of the Employment Act 2007.

8. Termination was unfair for want of valid reason and fair procedure under Sections 41, 43 and 45 of the Employment Act.

9. The Claimants are granted August salary at Kshs. 18,000 each and salary of 15 days worked in September at Kshs. 9,000 – total Kshs. 27,000.

10. They are granted 1 month salary each in lieu of notice at Kshs. 18,000.

11. The Court is not persuaded that the salary paid to the Claimants did not comprise the housing element. There was no demand contained in the demand letters before action, on house allowance. The prayer for house allowance has not been established and is rejected.

12. All Claimants seek Public Holidays' Pay, based on an unexplained 7 years of service. They did not work for 7 years. They worked for 1 year, 5 months. The prayer is declined.

13. They are granted the equivalent of 6 months' salary each, in compensation for unfair termination at Kshs. 108,000.

14. *Costs to the Claimants.*

15. **Interest granted at 14% per annum from the date of Judgment, till payment is made in full.**

IN SUM, IT IS ORDERED:-

I. Termination was unfair.

II. The Respondent to pay each Claimant: arrears of salary at Kshs. 27,000; notice pay at Kshs. 18,000; equivalent of 6 months' salary in compensation for unfair termination at Kshs. 108,000 – added up in each case, at Kshs. 153,000.

III. In total the Respondent shall pay to the Claimants Kshs. $153,000 \times 3 =$ Kshs. 459,000.

IV. Costs to the Claimants.

V. Interest granted at 14% per annum from the date of Judgment till payment is made in full.

Dated and delivered at Mombasa this 16th day of February 2018.

James Rika

Judge