



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1295 OF 2015

PATRICK OUMA WERE.....CLAIMANT

v

JACK INGOLO PETER

SAMSON GWANDA (sued in their capacity as Chairman and Secretary

respectively) KIBERA MATATU OWNERS SAVINGS AND CREDIT

CO-OPERATIVE SOCIETY LTD.....RESPONDENT

JUDGMENT

1. This Cause is undefended and it proceeded to formal proof on 19 February 2018 (the Respondents filed a Memorandum of Appearance on 12 August 2015, and the firm of E.A.O. Oyaro & Co. Advocates filed a Notice of Appointment of Advocate on 3 November 2016).
2. Despite the Appearance and Notice of Appointment (which was not served upon the Claimant), no Response to the Memorandum of Claim was filed.
3. According to an affidavit of service filed in Court on 19 February 2018, the Respondents were served with a hearing notice through registered post. They did not attend the hearing.
4. The Claimant gave sworn testimony and filed submissions on 8 March 2018.
5. The Court has considered the pleadings and evidence and identified 2 Issues as arising for determination, *whether there was unfair termination and appropriate remedies*.

Unfair termination of employment

6. The Claimant's testimony that he was dismissed through a short text message without being afforded an opportunity to be heard remains uncontested. He also stated that there was no notice.
7. In terms of sections 35 and 41 of the Employment Act, 2007, notice and a hearing prior to dismissal were imperative.
8. With the evidence that there was no notice and/or hearing, the Court is satisfied that the Claimant has met the threshold required of him by section 47(5) of the Employment Act, 2007.
9. The Court finds that the termination of the Claimant's contract was unfair.

Appropriate remedies

Salary in lieu of notice

10. The Claimant was employed as a Stage Clerk in April 2011. He was not issued with a written contract and was earning Kshs 600/- daily.
11. He testified that he worked 6 days a week (one day off) and that in a week he earned Kshs 3,000/- per week translating to Kshs 18,000/- per month.

12. That testimony is not challenged or rebutted and pursuant to sections 35, 36 and 49 of the Employment Act, 2007, the Court finds the Claimant has made a case for 1 month pay in lieu of notice of Kshs 18,000/-.

Service pay

13. Under the head of service pay, the Claimant sought Kshs 36,000/-. The breakdown was given as Kshs 9,000/- for each completed year of service, suggesting that it was at the rate of 15 days' pay for each year.

14. Considering there was no evidence that the Claimant was a member of a pension scheme or National Social Security Fund, the Court finds in his favour.

Compensation

15. Considering that the Claimant served for 4 years, it is the view of the Court that the equivalent of 4 months gross wages would be appropriate and fair.

Certificate of Service

16. A certificate of service is a statutory right and the Respondents are directed to issue one to the Claimant within 10 days.

Conclusion and Orders

17. The Court finds and holds that the termination of the Claimant's contract was unfair and awards him, and orders the Respondents to pay him

(i) Salary in lieu of notice	Kshs 18,000/-.
(ii) Service pay	Kshs 36,000/-.
(iii) Compensation	Kshs 72,000/-
TOTAL	Kshs 126,000/-

18. Claimant to have costs on half scale.

Delivered, dated and signed in Nairobi on this 20th day of March 2018.

Radido Stephen

Judge

Appearances

For Claimant Ms. Minyiri instructed by Mandala & Co. Advocates

For Respondent E.A.O. Oyaró & Co. Advocates

Court Assistant Lindsey