



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA
AT NAIROBI
CAUSE NUMBER 83 OF 2013

SAMSON ODEGA OPONDO.....CLAIMANT

VERSUS

BIDCO OIL REFINERIES LIMITED.....RESPONDENT

JUDGEMENT

1. The claimant averred that he was employed via a verbal contract in September, 1995 as receiving/issuing clerk which position he held up to the time his service was terminated on 24th November, 2011. According to the claimant he was a shift worker and would work from 7.30am to 6.00pm in the evening and for night shift from 5.30pm to 8.00am.
2. Around 15th August, 2011, the claimant was injured and got hospitalized up to 1st September, 2011. He returned to hospital on 2nd September, 2011 when he felt more pain to seek treatment.
3. On 7th September, 2011, he lodged a personal injury claim through his lawyer and when the respondent realized he was pursuing his injury benefits started frustrating him through victimization. On 24th November, 2011 the claimant was called by the Human Resource Manager Mr. Kelly and was told that since he was filed the injury claim against the respondent his services would be terminated immediately. He was asked to hand over all the respondent's property. According to the claimant failure to issue him with a termination letter was a proof that he committed no offence which warrant instant termination.
4. The respondent through its amended memorandum of response filed on 14th March, 2014 averred that the claimant was employed on 12th April, 2007 as a general worker. The respondent further denied that the claimant was injured while at work and further it frustrated the claimant through victimization when. He lodged a claim for personal injury.
5. The Respondent further averred that the claimant was not at work on the material day and denied his services were terminated. The respondent also denied that the claimant was declared redundant and pleaded that the claimant left duty on 19th November, 2011.
6. The matter proceeded ex-parte once the court became satisfied that the respondent was duly served but failed to appear during. The claimant on his part adopted his statement filed on 19th October, 2017 and asked the court to decide the matter based on it. The statement repeated the averments in the memorandum of claim hence there would be no need to reproduce them.
7. The onus of proof that there existed a valid reason for termination of an employee's services rests on the employer. The respondent did not exhibit any evidence in its pleading to show that an attempt have the claimant back to work at the pain of dismissal if he failed to do so. Further, the respondent failed to attend court to give evidence or cross-examine the claimant. The claimant's averment therefrom remained uncontested.
8. The court will therefore award the claimant as follows;
 - a. One months salary in lieu of notice Kshs.11,180/=
 - b. Twenty five days worked in November, 2011 Kshs.10,320/=
 - c. Leave for 3 years Kshs.27,720/=
 - d. Severance pay for 15 years Kshs.99,000/=

e. Six months salary for unfair termination of service Kshs.67,080/=

Total Kshs.215,300/=

f. Costs of the suit.

9. Items (a) (b) (c) (d) and (e) shall be subject to taxed and statutory deductions.

10. It is so ordered.

Dated at Nairobi this 2nd day of March, 2018

Abuodha J. N.

Judge

Delivered this 2nd day of March, 2018

Abuodha J. N.

Judge

In the presence of:-

.....for the claimant

.....for the Respondent