



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 874 OF 2011

CHARLES MUKURU MUGO.....CLAIMANT

v

TROPIFLORA LIMITED.....RESPONDENT

JUDGMENT

1. Charles Mukuru Mugo (Claimant) was employed by Tropiflora Ltd (Respondent) in 2004 as a driver.
2. On 7 June 2011, the Claimant lodged legal proceedings against the Respondent and he stated the Issue in Dispute as **Wrongful and unlawful termination of the Claimant's services and failure by the Respondent to pay the Claimant his terminal and employment dues and/or benefits.**
3. According to an affidavit of service filed in Court on 27 September 2011, one Francis Kihara, General Manager of the Respondent accepted service of Summons on 12 September 2011.
4. Despite the service, the Respondent did not file a Response.
5. The Cause was scheduled for hearing on 13 January 2011, 14 September 2012, 5 November 2012, 11 May 2017 and 3 October 2017 but for various reasons, hearing aborted.
6. When the Cause next came up for hearing on 12 April 2018, the Court declined an attempt by the Claimant to postpone the hearing, and the Claimant gave sworn testimony and produced exhibits.

Unfair termination

7. The Claimant's testimony on the separation was that around 4 August 2009 he was accused of causing damage to a tractor, was issued with a warning letter then sent on leave and on the same day issued with a letter terminating his employment.
8. According to the Claimant, no hearing was held neither was he given notice of termination.
9. The content of the termination letter does not suggest that a hearing as contemplated by section 41 of the Employment Act, 2007 was held.
10. Considering the said section and the Claimant's un rebutted testimony that no hearing was held, the Court finds that the Claimant has discharged the burden placed upon him by section 47(5) of the Act.
11. The termination of employment was therefore unfair.

Overtime (offs and public holidays)

12. The Claimant's testimony that he worked during public holidays in 2007, 2008 and 2009 without payment of overtime went unchallenged, and the Court can conclude that he has made out a case for the award of Kshs 23,520/- under these heads of claim.

Severance pay

13. Although he pleaded a remedy of severance pay, the separation was not on account of redundancy, and therefore severance pay is not available.

14. If by severance pay the Claimant meant service pay, he is equally not entitled to the same as a copy of the pay slip he produced show he was contributing to the National Social Security Fund.

Pay in lieu of Notice

15. With the conclusion that the termination of employment was unfair, the Court finds that the Claimant is entitled to the equivalent of 1 month wages as pay in lieu of notice (monthly wage was Kshs 10,192/-).

Compensation

16. The Claimant served the Respondent for about 5 years, and in consideration of the length of service, the Court is of the view that the equivalent of 5 months wages would be appropriate as compensation (gross wage was Kshs 11,231/-).

Conclusion and Orders

17. The Court finds and holds that the termination of the Claimant's employment was unfair and awards him

(a) Pay in lieu of notice	Kshs 10,192/-
(b) Overtime	Kshs 23,520/-
(c) Compensation	Kshs 56,155/-
TOTAL	Kshs 89,867/-

18. Claimant to have costs on half scale.

Delivered, dated and signed in open Court in Nairobi on this 20th day of April 2018.

Radido Stephen

Judge

Appearances

For Claimant Mr. Wachira instructed by E.M. Wachira & Co. Advocates

Court Assistant Lindsey