



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 989 OF 2016

(Before Hon. Lady Justice Maureen Onyango)

KEVIN OCHIENG OCHIENG.....CLAIMANT

-Versus-

FALCON SIGNS LIMITED.....RESPONDENT

JUDGMENT

By memorandum of claim dated 20th May 2016 and filed on 27th May 2016, the claimant avers that he was unfairly dismissed by the respondent. He prays for the following remedies –

- i) A declaration that the claimant's dismissal from his employment was wrong, unfair and unlawful.
- ii) A declaration that the claimant is entitled to payment of his terminal dues and compensatory damages as pleaded.
- iii) An order for the respondent to pay the claimant his terminal benefits and compensatory damages totalling to Kshs.164.665.60/=.
- iv) Interest on (iii) above from the date of filing suit till payment thereof.
- v) Cost of this suit.
- vi) The respondent to pay the claimant's costs with interest.

The respondent did not file any defence to the claim even though the court record shows that it was properly served. There is a stamp of the respondent on the notice of summons returned to court by the process server together with the affidavit of service filed on 25th January 2017. The case therefore proceeded undefended on 9th October 2017.

In his testimony, the claimant testified that he is an electrician and was employed by the respondent as an electrician/fabricator in January 2013 and worked until 4th October 2014. On that day, he reported for duty and was told to wait at the reception. He was later called by the son of the proprietor who asked the supervisor to take the claimant's uniform. Nothing was explained to him.

He testified that he was earning Kshs.11,455/= in 2014 as per payslip which he produced. He prayed for reliefs as prayed in the claim.

In the submissions filed on behalf of the claimant, it is submitted that he was verbally terminated without notice or justifiable cause, that from his evidence the claimant's termination was unfair, unlawful and without due consideration of the law or procedure.

It is submitted that the claimant proved his claim by submitting his job card, payslip for October 2014 and letter of demand as exhibits in support of his testimony in court. It is submitted that the claimant's evidence is not rebutted in any way or controverted and that he is entitled to the sums claimed at paragraph 10 and 11 of the memorandum of claim in the sum of Kshs.164,665/=.

Determination

The claim herein is not defended even though there is evidence of service of the memorandum of claim. The payslips and job card produced by the claimant are sufficient proof of existence of employment relationship between the claimant and the respondent.

The evidence of the claimant having been uncontroverted, the court finds that he was unfairly terminated by the respondent in terms of Section 45 (2) of Employment Act, as he was verbally terminated without being subjected to a hearing or given a reason for termination.

He is therefore entitled to the reliefs sought as follows: -

1. Salary in lieu of notice.

I award the claimant gross pay at Kshs.13,219/=.

2. Pay in lieu of unpaid leave.

Having worked for 22 months, he is entitled to 38.5 leave days at $1\frac{3}{4}$ days per month for 22 months worked as provided in Section 28 of Employment Act, I award him Shs.16,964.40/=.

3. Service gratuity.

The claimant was a member of NSSF as evidenced by his payslip and is not entitled to service gratuity (See Section 35 (5) and (6) of Employment Act).

4. Compensation

Having worked for 22 months and taking into account all the circumstances of his case including the factors set out in Section 49 (4) of the Employment Act, I award the claimant 3 months' salary as compensation for unfair termination in the sum of Kshs. 39,657/=.

Conclusion

In conclusion, I declare that the termination of the claimant's employment by the respondent was unfair and award him **Kshs.69,840.40/=**. The respondent will also pay costs of the claim. The award in items 1 and 2 will attract interest at court rates from date of filing suit while award in 4 will attract interest from date of judgment.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 20TH DAY OF APRIL 2018

MAUREEN ONYANGO

JUDGE