



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 107 OF 2017

(Before Hon. Justice Mathews N. Nduma)

ELKANAH NYAKUNDI ONCHOKE.....CLAIMANT

VERSUS

ELLAMS PRODUCTS LIMITED.....RESPONDENT

J U D G M E N T

1. The Claimant seeks compensation and payment of terminal benefits set out under paragraph 14 of the Memorandum of Claim for alleged unlawful termination of employment.
2. The Claim was duly served and a return of service by Charles Gomba, advocate for the Claimant sworn on 20th March, 2017 filed on 21st March, 2017.
3. The Respondent did not enter appearance nor file a statement of defence.
4. The Claimant relied on the pleadings in the statement filed on 24th January, 2017 and list of documents annexed to the Memorandum of Claim.
5. The Claimant further testified under oath and adopted the aforesaid documents as his evidence in chief.
6. The Claim remains uncontroverted.
7. The Claimant has satisfied the court that he was employed by the Respondent as a casual worker earning a gross monthly salary of Kshs.9,807.00 per month. That the Claimant was subsequently issued a three month contract renewable from time to time. The Claimant continued to work continuously, until when he became sickly in the year 2015 – 2016. He attended hospital occasionally and therefore was absent from work. On 8th August, 2016, the Respondent decided to terminate his employment on the ground that he was no longer able to work consistently. The Claimant was not given letter of termination and was simply told to go away.
8. The Claimant produced various medical documents to prove hospital attendances.
9. The Claimant testified that his termination was unlawful and it be declared so and he be paid compensation.
10. The Claimant seeks payment in lieu of notice, which he was not given upon termination in the sum of Kshs.14,976 which was his monthly salary at the time of termination. The Claimant stated that he did not go on leave and was not paid in lieu of leave in the years 2013 - 2015 and claims Kshs.3,873.53; 7,873.53 and 10,483.20 respectively. The court awards the said benefits as claimed.

Compensation

11. The Claimant is entitled to compensation in terms of section 49(1)(c) as read with sub-section 49(4), since the Respondent violated sections 41, 43, and 45 of the Employment Act, in unlawfully terminating the employment of the Claimant.
12. In this regard, the Claimant worked for about four (4) years and his sickness contributed to his gradual absenteeism from work. The Respondent did not submit the Claimant to a Medical Board to determine if he should be retired for medical reasons or not but chose to take a short cut and terminate his employment without notice, notice to show cause, or hearing. The Respondent did not also pay the Claimant any terminal benefits upon termination.

13. The Claimant suffered loss and damage. He did not contribute to the unlawful termination. The court deems it appropriate to award the Claimant, five (5) months salary in compensation for the unlawful termination.

14. In conclusion Judgment is entered in favour of the Claimant as against the Respondent as follows:-

(i) Kshs.14,976 in lieu of notice.

(ii) Kshs.26,230.26 in lieu of leave.

(iii) Kshs.74,880, being equivalent of five (5) months salary as compensation for the unlawful termination.

Total award Kshs.116,086.26.

(iv) Interest is payable at court rates from date of filing suit in respect of items (i) & (ii) above and with effect from date of Judgment on item (iii).

(v) Costs to abide the outcome.

Dated and Signed in Kisumu this 7th day of May, 2018

Mathews N. Nduma

Judge

Delivered and signed in Nairobi this 30th day of May, 2018

Maureen Onyango

Judge

Appearances

Mr. Gomba & Co. Advocates for Claimant

Anne Njung'e – Court Clerk