



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1546 OF 2015

TIMOTHY K. ODINDO.....CLAIMANT

- VERSUS -

BAKERS DELIGHT HOLDING LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 22nd June, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 02.09.2015 through Wilfred K. Babu & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. 13 days salary for December 2014 Kshs. 6, 071.00.
- b. One month pay in lieu of notice Kshs.14, 000.00.
- c. Unpaid service for 2 years at 15 days per year Kshs.14, 000.00.
- d. Two years' leave Kshs.28, 000.00.
- e. Unpaid house allowance for 2 years at 15% basic pay Kshs. 50, 400.00.
- f. Unpaid overtime 1.5 per hours for 1318 hours by Kshs.58 per hour Kshs. 114, 666.00.
- g. Unpaid leave travelling allowance for 2 years at Kshs.3, 000.00 per year making Kshs.6, 000.00.
- h. 12 months' salaries for damages for unfair termination Kshs. 168, 000.00.
- i. Costs and interest.

Despite service the respondent did not enter appearance and did not attend at the hearing of the suit. The claimant testified to support his claims.

The Court has considered the evidence, the pleadings, and the submissions on record. The respondent employed the claimant as a chef from 01.11.2012 to December 2012. The claimant was terminated on 13.12.2014 without a notice and without a reason being assigned. The Court has considered the matter in dispute and finds that the only issue for determination is whether the claimant is entitled to the remedies as prayed for. The Court makes findings as follows:

- a. The claimant worked for 13 days in December 2014 and was not paid and is awarded **Kshs. 6, 071.00** as prayed for.
- b. The termination was without a notice as per section 35 of the Employment Act, 2007 and the claimant is awarded one month pay in lieu of notice **Kshs.14, 000.00**.
- c. The claimant was a member of the NSSF and is not entitled to unpaid service for 2 years at 15 days per year Kshs.14, 000.00. Section 35(6) of the Act applies and the prayer will fail.
- d. The claimant was not given annual leave for the two years of service and in lieu of annual leave he is awarded **Kshs.28, 000.00** as

prayed for.

e. The claimant testified that they agreed upon a consolidated pay and there being no justification, the prayer for unpaid house allowance for 2 years at 15% basic pay making Kshs. 50, 400.00 will fail – the claimant’s evidence being that parties never agreed on payment of house allowance and that there was no grievance in that regard because he never demanded payment of house allowance throughout the service.

f. The claimant testified that the agreed salary covered all the hours worked and there was no agreement on overtime. The Court returns that the parties are bound by the agreement on the monthly pay of Kshs.14, 000.00 for all the work done. The prayer for unpaid overtime 1.5 per hours for 1318 hours by Kshs.58 per hour Kshs. 114, 666.00 will therefore fail as unjustified - the claimant confirmed that there had been no grievance about overtime and he never demanded the same throughout the service and that he knew, and the agreement was, that he works from 6.00am to 6.00pm.

g. The claimant did not justify unpaid leave travelling allowance for 2 years at Kshs.3, 000.00 per year making Kshs.6, 000.00. The prayer will therefore fail.

h. The termination was without notice and a hearing as per section 41 of the Act. There was no valid reason as envisaged in section 43 of the Act. The termination was therefore unfair. The Court has considered the claimant’s clean record of service, he did not contribute to the termination, the termination was abrupt and that he desired to continue in employment. Under section 49 of the Act, the claimant is awarded the 12 months’ salaries in compensation for unfair termination **Kshs. 168, 000.00** as prayed for.

In conclusion judgment is hereby entered for the claimant against the respondent for:

a. Payment of **Kshs.216, 071.00** by 01.08.2018 failing interest to run thereon at Court rates from the date of this judgment till full payment.

b. The respondent to pay claimant’s costs of the suit.

Signed, dated and delivered in court at **Nairobi** this **Friday 22nd June, 2018.**

BYRAM ONGAYA

JUDGE