



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE. NO. 911 OF 2012

BORNFACE BUKHUMBALECLAIMANT

VERSUS

LIFESPRINGS CHRISTIAN ACADEMY/

KIBERA KIDS CENTRE.....RESPONDENT

JUDGMENT

Introduction

1. This is a claim for terminal dues plus compensation for unfair termination of the claimant's contract of service by the respondent on 14.5.2012. It is the claimant's case that the termination was done for no valid reason and without according the claimant any hearing. He therefore prayed for Kshs.882,000 plus costs and interest.
2. The respondent has denied the alleged unfair termination and averred that she served the claimant with one month termination but she left without serving the notice period in breach of the contract. It is the respondent's case that she served termination notice on the claimant after losing confidence in her after she suspected her of theft but the claimant absconded work before the lapse of the notice period and thereby terminated his employment contract. She therefore prayed for the suit to be dismissed with costs and counterclaimed for Kshs.8,600 being one month salary in lieu of notice.
3. The suit was heard on 19.1.2017 when the claimant testified as Cw1 but the respondent never called any witness. After the hearing, the claimant filed written submissions.

Claimant's Case

4. The claimant testified that he was employed by the respondent from 27.3.2008 to 14.5.2012 as a Gardener earning Kshs.9,000. He started on a fixed term contract in 2008 which was renewed once but thereafter he continued working and earning monthly salary. On 15.5.2012 he was dismissed by the respondent's manager without any valid reason and or hearing despite having served the respondent without any indiscipline record. He therefore prayed for compensation of the unfair termination. He further prayed for his salary for May 2012 plus other reliefs as prayed in his amended Memorandum of Claim.

Analysis and Determination

5. There is no dispute that the claimant was employed by the respondent between 2008 and 14.5.2012. The issues for determination are:
 - (a) Whether the claimant deserted employment or he was unfairly terminated;
 - (b) Whether the reliefs sought should be granted.

Unfair termination or desertion

6. The respondent has not tendered any evidence to support the alleged desertion by the claimant after allegedly serving termination notice. The court therefore finds that the claimant never deserted but was terminated. Under section 45(2) of the Employment Act, termination of employee's contract is unfair if the employer fails to prove that it was grounded on valid and fair reason and that it was done after following a fair procedure. In this case, the respondent never adduced any evidence to rebut the claimant's evidence that he was terminated for no valid reason and without according him any hearing.

7. The respondent has pleaded in her defence that she served notice of one month to terminate the claimant's service after suspecting him of theft of seedlings. Such allegation obviously brought the termination within the provisions of section 45, 41 and 43 of the Employment Act which bar the employer from terminating his employees employment without any valid and fair reason and without according him a fair hearing. By failing to adduce evidence in this case, the respondent has failed to prove that she observed substantive as well as procedural fairness before terminating the claimant's contract of service. Consequently, it is my holding that the termination was unfair within the meaning of section 45 of the Act.

Reliefs

8. Under section 49 of the Act, I award the him Kshs.9,000 being one month salary in lieu of notice plus Kshs.36,000 being 4 months' salary compensation for unfair termination in awarding the said compensation I have considered the short period of service and the fact that no misconduct was proved against the claimant that contributed to the termination.

9. He is also granted Kshs.4,500 being salary for 14 days worked in May 2012. He is also awarded Kshs.66,150 being house allowance, at the rate of 15% of the Kshs.9,000 basic pay for 49 months served.

Conclusion and Disposition

10. For the reason that the claimant was unfairly and wrongfully terminated, I enter judgment for him in the sum of Kshs.115,650 plus costs and interest less statutory deductions.

Dated, Signed and Delivered in Open Court at Nairobi this 31st day of July, 2018

ONESMUS N. MAKAU

JUDGE