



REPUBLIC OF KENYA

INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 1933 OF 2014

(Before D. K. N. Marete)

FREDERICK K. WABWIRE.....CLAIMANT

VERSUS

JAPA PROTECTION SYSTEMS LTD.....RESPONDENT

JUDGEMENT

This matter was brought to court vide a Memorandum of Claim dated 30th October, 2014. The issue in dispute is therein cited as;

1. *Unlawful termination*
2. *Refusal to pay terminal dues of the above named claimant*

This matter is not defended, or at all. This is despite service. The respondent only entered appearance vide a Memorandum of Appearance dated 16th December, 2014.

The claimant's case is that he was employed by the respondent as a security guard in January, 2009. This lasted until sometimes in April, 2014. He earned Kshs.6,500.00 per month at the onset of his employment in January, 2009.

The claimant's further case is that his employment contract was verbal and his only evidence of employment is the staff identity card annexed to the claim.

The claimant's other case is that sometimes in April, 2014, while the claimant was on duty, a motor vehicle was stolen at his work station. The respondent accused him of the theft and he was charged in a criminal matter of which he was ultimately acquitted. He was, however, summarily dismissed from employment without being awarded an opportunity to answer the allegations leveled against him.

The claimant's further case is that upon dismissal/termination/redundancy, he was entitled to the following;

- i. *Salary in lieu of Notice*
- ii. *Gratuity allowance @25% on the basic salary*
- iii. *Unlawful deductions made but not remitted*
- iv. *Certificate of service*
- v. *Pro-rate leave for period worked*
- vi. *Any other statutory entitlements.*

He claims as follows;

- i. *Unpaid salary for April* *Kshs.6,500.00*

ii. Notice of 1 month Kshs.6,500.00

iii. Leave days $(6,500/30*21*64/12)$ Kshs.24,267.00

iv. House Allowance $(15/100*6,500*64/12)$ Kshs.62,400.00

v. Gratuity Allowance @20% on the basic

salary for 64 months Kshs.104,000.00

vi. Compensation for unlawful

loss of employment $(6,500*64)$ Kshs.416,000.00

He prays as follows;

1. A declaration that the actions of the Respondent amounted to unlawful dismissal.

2. Unpaid salary for April Kshs.6,500.00

3. Notice of 1 month Kshs.6,500.00

4. Leave days $(6,500/30*21*64/12)$ Kshs.24,267.00

5. House Allowance $(15/100*6,500*64/12)$ Kshs.62,400.00

6. Gratuity Allowance @20% on the basic

salary for 64 months Kshs.104,000.00

7. Compensation for unlawful

loss of employment $(6,500*64)$ Kshs.416,000.00

8. Unlawful deduction/withheld salary as per minimum wages order (leave of court will be sought to utilize CPMU of the labour Ministry)

9. Interest on 2 – 7 above at court rates.

10. The Respondent do issue the grievant with certificate of Service

11. Cost of the suit

12. Any other relief that this Honourable Court deems fit to grant.

The matter came to court variously until 18th April, 2018 when the claimant in the absence of the respondent proposed a determination by way of written submissions.

The issues for determination therefore are

1. Whether the termination of the claimant by the respondent was wrongful, unfair and unlawful?
2. Whether the claimant is entitled to the relief sought?
3. Who bears the costs of this claim?

The 1st issue for determination is whether the termination of the claimant by the respondent was wrongful, unfair and unlawful. The claimant in her written submission submits a case of unlawful termination of employment in violation of section 44 (1) of the Employment Act, 2007 which provides as follows;

44.(1) Summary dismissal shall take place when an employer terminated the employment of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.

It is his case that the respondent has not in any way demonstrated a case of lawful termination of employment.

In the absence of a defence, I would find a case of unlawful termination of employment and hold as such. This answers the 1st issue for determination.

The 2nd issue for determination is whether the claimant is entitled to the relief sought. He is. Having won on a case of unlawful termination of employment, he becomes entitled to the relief sought.

I am therefore inclined to allow the claim and order relief as follows;

i. One (1) months salary in lieu of notice.....Kshs.6,500.00

ii. Six (6) months salary as compensation for unlawful

termination of employment Kshs.6500.00 x 6 =Kshs.39,000.00

Total of Claim.....Kshs.45,500.00

iii. The costs of the claim shall be borne by the respondent.

iv. The costs of the claim be and are hereby assessed at Kshs.30,000.00

Dated and signed this 19th day of July, 2018.

D.K. NJAGI MARETE

JUDGE

Delivered and signed this 25th day of July, 2018.

MAUREEN ONYANGO

PRINCIPAL JUDGE

Appearances

1. Miss Atieno Instructed Chege Kibathi & Company Advocates for the claimant.

2. No appearance for the respondent.