



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CASE NO 1101 OF 2015**

**GEOFFREY ANGAYA AHAZA.....CLAIMANT**

**VERSUS**

**EAGLE PAPER & STATIONERY LTD...RESPONDENT**

**JUDGMENT**

1 The claimant averred he was employed by the respondent as a storekeeper at a salary of Kshs 9,000/= per month and a house allowance of Kshs 1,580/= which was later increased to Kshs 10,200 per month. He worked for the respondent until 13<sup>th</sup> March, 2015 when he claimed the respondent unfairly terminated his services. The claimant contended that the respondent did not have a valid reason for terminating his services.

2 The claimant therefore sought compensation for unfair termination of his service and payment of his full terminal dues. The respondent refuted the claimant's averments and pleaded that the claimant's services was summarily terminated for gross misconduct after he was found stealing account books and hiding the under pellets in the respondent's premises. The matter proceeded ex-parte and the claimant in his evidence in chief stated further that he used to report to work at 9.00 a.m and leave at 6.30 p.m. and that he worked from Monday to Saturday. He further stated that he never went on leave for the period he worked. He further stated there was no off.

3 It was further his evidence that he left employment on 13<sup>th</sup> March, 2015 after he was accused of stealing counter books. According to him, he was never issued with notice to show cause and further that there was no disciplinary hearing. He further stated that he was never paid full house allowance and overtime. Although the matter was undefended the court makes the following observations. First, the respondent attached to its memorandum of response, a letter of appointment dated 21<sup>st</sup> December, 2012. This letter states that the claimant was employed as a general labourer. Second, the working hours are stated as 9.00 a.m. to 5.30 p.m. Monday through to Friday and 9.00 a.m. to 3.00 p.m. on Saturday. Sundays were declared as a rest day.

4 This letter was signed by the claimant as an acknowledgement that he read and understood the terms and conditions set out therein. The claimant's oral testimony confirms the contents of this letter as pointed out above. A person working from 9.00 a.m. to 5.30 p.m. will have worked for approximately seven and a half hours. The statutory working hours are eight hence a person who works for less cannot claim overtime. Secondly, the appointment letter states that Sunday was a rest day. The claimant's claim that he never had off-days therefore cannot be correct. The claimant's payslip further indicated NSSF deductions.

5 The claimant's letter of appointment which he did not dispute stated his position as a general worker. He did not produce any evidence to the contrary that he was employed as a storekeeper. The court further observed that the claimant was putting up a claim for underpayment without showing any basis for what he considered was his due salary to enable the court understand the nature and extent of the underpayment. The claimant's claim for overtime and underpayment is therefore rejected.

6 Concerning claim for leave, in the rejoinder to the demand letter, the respondent denied the claimant never went on leave during the period he worked and further that the respondent's policy was that every employee had to complete their leave by December of every year or take payment in lieu. The claimant neither refuted this position nor produced any evidence that he asked for leave and was never allowed to go. This head of claim is also rejected for lack of proof.

7 The burden of proof of reasons for dismissal is on the employer. The employee has however the duty of prove that an unfair termination has taken place. The fact that the respondent has not appeared in court to defend the claim does not lessen this burden on the employee. Whereas the respondent may have had valid and justifiable reasons to send away the claimant, they did not show any evidence that the procedural requirements stipulated by the Employment Act were followed before the separation.

8 For this reason, alone the court will declare the termination unfair and award the claimant four months salary that is to say Kshs 46,920 as compensation for unfair termination of service. This award shall be subject to statutory deductions.

9 The claimant shall further have costs of the suit.

10 It is ordered.

Dated at Nairobi this 20<sup>th</sup> day of July, 2018

**Abuodha J. N.**

**Judge**

**Delivered at Nairobi this 20<sup>th</sup> day of July, 2018**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the Claimant

.....for the Respondent