



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

(Before Hon. Lady Justice Maureen Onyango)

CAUSE NO. 1989 OF 2013

GERALD ONYANCHA.....CLAIMANT

VERSUS

ICT FIRE AND RESCUE.....RESPONDENT

AND

CAUSE NO. 1990 OF 2013

INNOCENT NYAKWANA.....CLAIMANT

VERSUS

ICT FIRE AND RESCUE.....RESPONDENT

JUDGMENT

This judgment is in respect of two cases, the first being Cause 1989 of 2013 filed by Gerald Onyancha who for purposes of this judgment is the 1st claimant. The second case is Cause 1990 of 2013 filed by Innocent Nyakwana who for purposes of this case will be the 2nd claimant.

Both claimants were employed by the respondent ICT Fire and Rescue.

Gerald Onyancha – 1st Claimant

He was employed by the respondent as a Salesman on 15th May 2013. He worked until 30th July 2013 when he was dismissed from employment.

In the response filed on behalf of the respondent, it is averred that **Gerald** was dismissed on 31st July 2013 for failing to meet targets set by the management and poor performance of his duties. It is further averred that the claimant was to be paid all his terminal dues after returning company's assets which he did not. The respondent avers that it complied with the law while dismissing the claimant.

In the response filed in respect of **Innocent Nyakwana** the respondent avers that the claimant was dismissed on account that there was no longer enough work and the claimant should surrender all the company property then go for payment later.

Cause No. 1989 of 2013 was heard on 18th December 2017 while Cause No. 1990 of 2013 was heard on 19th December 2017. Defence case was fixed for hearing on 24th April 2018 for both case. However on the hearing date neither the respondent nor counsel for the respondent attended court and the respondent's case was closed.

In his testimony **Gerald Onyancha** testified that he was employed in April 2013 and worked for three months. On 30th July 2013 he was asked to leave the compound by the Manager in charge by the name Gladys Kihanya. He was not given any reason. He was informed he would be contacted about his dues but was never contacted. He was not issued with a letter of dismissal.

He made phone calls and sent text messages, which were not responded to. He then engaged his lawyer who sent a demand letter to the

respondent on 10th October 2013. There was a response on 19th October 2013 by Ndungu Mwaura and Company Advocates in which it is stated he was dismissed for being drunk and absconding duty. He denied absconding duty or going to work drunk.

He prayed for terminal dues and compensation. He further prayed for salary for July 2013 and notice.

Innocent Nyakwana testified that he was employed by the respondent on 22nd March 2013. On 30th July 2013 when he reported to work, he was called by Gladys Sihanya, the Manager and asked to return the laptop he was issued by the respondent. Gladys then informed him that the company was not able to pay his salary because of low business. He was asked to leave and wait for his terminal dues. He was not paid salary for that month. Gladys informed him that the company will communicate but there was no communication.

He later instructed counsel who wrote a letter of demand to the respondent on 10th October 2013. In the response on 22nd October 2013 through Ndungu Mwaura and Company Advocates it was alleged that he was dismissed for poor service. He was not issued with a letter of termination of employment or any warning letter.

He prayed for payment of salary for July 2013, notice and compensation.

In the written submissions for the claimants, it is submitted the termination of their employment was unfair and did not comply with Section 41, 43 and 45 of the Employment Act. They pray for judgment as prayed in the memorandum of claim.

Determination

The testimony of the claimants is unconverted. They were dismissed from employment verbally and were not paid any terminal dues.

Section 41 requires that any employee is informed of the reason for termination and given an opportunity to defend himself. Section 43 requires that the employer proves the reason for termination.

Having been terminated verbally without being given any reason, the termination of the claimant's was unfair in terms of Section 45(2) of the Employment Act and I declare accordingly.

Remedies

The claimants prayed for remedies as follows –

1st Claimant – Gerald Onyancha

- a. One month salary in lieu of notice Kshs.20,000
- b. Salary for the month of July 2013 Kshs.20,000
- c. Maximum compensation or as may be ordered by court Kshs.240,000

Total Kshs.280.000

- d. Certificate of service.

2nd Claimant – Innocent Nyakwana

- a. One month salary in lieu of notice Kshs.40,000
- b. Salary for the month of July 2013 Kshs.40,000
- c. Maximum compensation or as may be ordered by court Kshs.480,000

Total Kshs.560.000

- d. Certificate of service.

Having been unfairly terminated and having not been given notice or paid salary for the month of July 2013 each claimant is entitled to salary for July 2013 and one month's salary in lieu of notice.

Taking into account the circumstances of their employment and the short period of service, I award each claimant compensation equivalent to one month's salary. I therefore award each of them the following –

1ST CLAIMANT – GERALD ONYANCHA

i) Salary for July 2013 Kshs.20,000

ii) One month's salary in lieu of notice Kshs.20,000

iii) Compensation Kshs.20,000

Total Kshs.60,000

iv) Certificate of service.

2ND CLAIMANT – INNOCENT NYAKWANA

v) Salary for July 2013 Kshs.40,000

vi) One month's salary in lieu of notice Kshs.40,000

vii) Compensation Kshs.40,000

Total Kshs.120,000

viii) Certificate of service.

The respondent shall pay the claimants' costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 21ST DAY OF SEPTEMBER 2018

MAUREEN ONYANGO

JUDGE