



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE 1173 OF 2013

KENYA UNION OF COMMERCIAL FOOD
AND ALLIED WORKERS.....CLAIMANT
VERSUS
NATIONAL CHAMBER OF COMMERCE AND INDUSTRY.....RESPONDENT

JUDGEMENT

1. On 16th April, 2018 the court ordered that the only issue which was before it whether the grievant was regularly terminated from the service of the respondent.
2. According to the grievant, he was employed by the respondent on 10th May, 2004 as a driver at a salary of Kshs 9,230/= per month. This was increased progressively to Kshs 18,000/= together with a house allowance of Kshs 4,500/= by the time his services were terminated in 2011. The grievant complained that on 11th August, 2011 the respondent terminated his services on the ground that he had been employed as a driver on secondment and since the respondent did not own a vehicle this led to termination of the grievant’s services.
3. On 16th May, 2015 the court although being of the view that the respondent had all along been aware of the claim but never cared to file a response thereto reluctantly granted the respondent fourteen days to file the response to the claim. The respondent never did so despite the court’s order in that regard. Appendix 2 of the claimant’s bundle of documents is a letter dated 10th May 2004 informing the claimant of his employment with the respondent as a driver. The letter makes no mention of the issue of secondment.
4. By a letter dated 11th August, 2011 the respondent purported to terminate the grievant’s services on the grounds that it had come to the respondent’s attention that the grievant was on secondment and since the respondent did not own a vehicle his services would be terminated with effect from 11th August, 2011. Prior to the purported termination the respondent progressively reviewed the grievant’s salary and by the time he was terminated, that is to say in April, 2011 his salary was revised upwards to Kshs 18,000/= per month.
5. As observed earlier, the grievant’s letter of appointment made no reference to secondment hence it was quite bizarre that the respondent could terminate his services on this account and more so on unconvincing grounds that the respondent did not own a vehicle. If it indeed be true that the respondent never owned a vehicle why employ the grievant and for eight years?
6. This is a *locus classicus* of an unfair termination of service which the court cannot countenance. The court as a result awards the grievant as follows:

- a. Salary for July 2011 together with house allowance 22,500
- b. Salary for 11 days worked in August plus
house allowance 11,000
- c. Salary in lieu of notice 18,000
- d. Twelve month’s salary for unfair
termination of service 216,000

267,000

e. Costs

f. Items (a), (b) (c) and (d) shall be subject to statutory deductions.

7. It is so ordered.

Dated at Nairobi this 21st day of September, 2018

Abuodha J. N.

Judge

Delivered at Nairobi this 21st day of September, 2018

Abuodha J. N.

Judge

In the presence of:-

.....for the Claimant

.....for the Respondent.