



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 420 OF 2013

ALFRED WANJALA KHAEMBA CLAIMANT

v

GLASS ACE RESPONDENT

JUDGMENT

1. The Claimant instituted legal proceedings against the Respondent on 27 March 2013 and he stated the issue in dispute as *wrongful/unlawful and/or unfair termination of employment and non-payment of terminal dues*.
2. In a Statement of Defence filed on 17 May 2013, the Respondent admitted that it owed the Claimant Kshs 34,860/- made up of December 2011 salary, National Social Security Fund deductions and severance pay. The Claimant was put to strict proof on the other heads of claim.
3. On 18 April 2018, the parties advocates (Mr. Kiarie Mungai and Mr. Kaburu informed the Court that the parties were negotiating and the Court allowed them up to 2 July 2018 to reach agreement or the Cause would proceed to hearing.
4. When the Cause was called out on the scheduled date, the Respondent and its advocate were not in Court and the Court upon being notified that there was no agreement directed that the Cause proceed to hearing.
5. The Claimant gave sworn testimony and opted not to file written submissions.

Unfair termination of employment

6. The Claimant's testimony that he was dismissed verbally on 24 December 2011 (without any notice) was not challenged and or rebutted and the Court finds that the dismissal was unfair there was no written notice as contemplated by section 35 of the Employment Act, 2007).
7. Considering that the Claimant served the Respondent for about 4 years, the Court assesses compensation equivalent to 5 months gross wages (at time of separation, the gross wage was Kshs 20,000/-).

Pay in lieu of notice

8. The Claimant was entitled to 1 month notice and because none was given the Court holds that he is entitled to 1 month pay in lieu of notice of Kshs 17,000/-.

December 2011 salary

9. The Claimant was dismissed on 24 December 2011 but was not paid the full salary up to the date of separation leaving a balance which the Respondent admitted was Kshs 6,160/-. The Claimant having testified he was paid Kshs 10,000/- leaving a balance of Kshs 10,000/-. The Court will allow the same on admission.

National Social Security Fund deductions

10. The Respondent admitted that Kshs 6,800/- deducted on account of contributions was not remitted to the National Social Security Fund and the Court will allow it.

Severance pay

11. The Respondent admitted that the Claimant was entitled to Kshs 22,000/- under this head and it is allowed.

Certificate of Service

12. A certificate of service is a statutory right and the Respondent should issue one to the Claimant.

Conclusion and Orders

13. The Court finds and holds that the termination of the Claimant's employment was unfair and awards him

(a) Compensation Kshs 100,000/-

(b) Pay in lieu of notice Kshs 17,000/-

(c) December 2011 wages Kshs 10,000/-

(d) NSSF deductions Kshs 6,800/-

(e) Severance pay Kshs 22,000/-

TOTAL Kshs 155,800/-

14. Certificate of Service to be issued forthwith.

15. Claimant to have costs.

Delivered, dated and signed in Nairobi on this 26th day of October 2018.

Radido Stephen

Judge

Appearances

For Claimant Mr. Kiarie Mungai instructed by Nchogu, Omwanza & Nyasimi Advocates

For Respondent Kaburu Miriti & Co. Advocates

Court Assistant Lindsey