



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2061 OF 2013

SAMUEL ELEGWA MAYOYA.....CLAIMANT

v

RELCON POWER SYSTEMS LTD.....1st RESPONDENT

MAHESH SHAH.....2nd RESPONDENT

JUDGMENT

1. The Claimant commenced legal proceedings against the Respondents alleging unfair termination of employment and breach of contract. He sought a total of Kshs 519,088/- on account of the breaches.
2. According to an affidavit of service filed in Court on 5 April 2017, the Respondents were served with Summons and Memorandum of Claim on 6 January 2014. The documents were accepted by a Secretary who stamped and signed in acknowledgment.
3. Despite accepting service, the Respondents did not enter Appearance or file a Response.
4. The Claimant had the Cause fixed for hearing on 18 November 2014. On record was an affidavit of service indicating that the Respondents had on 17 March 2014, acknowledged service of a hearing notice.
5. However, the hearing did not proceed as the Court directed that oral evidence be led.
6. On 30 October 2017, the Cause was fixed for hearing on 19 April 2018. An affidavit of service filed in Court showed that the Respondents acknowledged service of a hearing notice on 15 March 2018. They did not appear in Court. The hearing did not proceed.
7. On 30 April 2018, the Deputy Registry fixed the Cause for hearing on 26 June 2018. The Respondents did not appear.
8. Considering that the Respondents had not entered Appearance or filed a Response, the Court allowed the hearing to proceed despite the Claimant attempting to get an adjournment to enable negotiations.
9. The Claimant gave sworn testimony which was not challenged or controverted but did not file submissions as directed.

Unfair termination of employment

10. The Claimant's testimony that he was instructed to go to the Respondents office from a site in Kileleshwa where he was informed verbally on 2 September 2013 that his services were no longer required remains uncontroverted.
11. In terms of section 35 of the Employment Act, 2007, the Claimant should have been given written notice and because there was no such notice, the Court finds that the termination of employment was unfair.
12. If there were valid and fair reasons to terminate the contract of the Claimant, the Respondent failed to prove such reasons as required by sections 43 and 45 of the Employment Act, 2007.

Pay in lieu of notice

13. The Claimant was not given written notice of termination of employment as envisaged under section 35 of the Employment Act, 2007 and the Court will allow an award of 1 month salary in lieu of notice as sought.

Compensation

14. The Claimant served the Respondent's for about 3 years, and in consideration of the length of service, the Court is minded to award the equivalent of 3 months wages as compensation (monthly accumulated wage was Kshs 11,700/- as Claimant was on daily rate of Kshs 450/-).

Breach of contract

Underpayments

15. The Claimant contended that he was underpaid by Kshs 27,362/- in 2010, Kshs 28,828/- in 2011, Kshs 33,383/- in 2012 and Kshs 9,620/- in 2013.

16. In support of the case for underpayments, the Claimant drew the attention of the Court to Legal Notices No. 98 of 2010, 46 of 2011, 71 of 2012 and 197 of 2013.

17. The evidence remaining unrebutted, the Court allows the head of claim.

Leave

18. Although pleading an entitlement to leave for 18 months, the Claimant produced leave records which show that the leave for 2010 to 2013 were commuted and paid in cash on 22 January 2013.

Sick leave

19. The Claimant did not lay an evidential foundation or legal basis for this breach of contract/head of claim and it is declined.

Medical expenses

20. The Claimant stated that he got injured in the course of work and that the Respondents did not cater for the expenses. He produced receipts for Kshs 2,850/- and the Court finds that he is entitled to refund of the same.

Overtime

21. The Claimant did not lay an evidential basis or demonstrate that he worked overtime.

Conclusion and Orders

22. The Court finds and holds that the termination of the Claimant's employment was unfair and also there was breach of contract and awards him

(a) Pay in lieu of notice	Kshs 11,700/-
(b) Compensation	Kshs 35,100/-
(c) Underpayments	Kshs 99,193/-
(d) Medical expenses	Kshs 2,850/-
TOTAL	Kshs 148,843/-

23. Claimant to have costs on half scale.

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

Radido Stephen

Judge

Appearances

For Claimant Mr. Kandere instructed by S.K. Opiyo & Co. Advocates

