



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA

CAUSE NUMBER 152 OF 2015

BETWEEN

ALPHONCE ONYANGO OWUOR.....CLAIMANT

VERSUS

NAVIDA NATURAL FOODS LTDRESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Katee, Omolo, Onyango & Company Advocates for the Claimant

Kiarie Kariuki & Company Advocates for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 20th March 2015. He avers he was employed by the Respondent Company as a Manager on or about 4th August 2014, earning a salary of Kshs. 32,000 per month. On 13th December 2014, the Claimant reported to work. He was ordered by Respondent's Director to leave employment. He was not paid salary for 15 days. He prays for Judgment against the Respondent for:-

- a) Declaration that termination was unfair.
- b) Declaration that the Claimant was entitled to 1 month leave after every year worked.
- c) 1 month salary in lieu of notice at Kshs. 32,000.
- d) Salary for 15 days worked in December 2014 at Kshs. 16,000.
- e) Unpaid annual leave at Kshs. 13,333.
- f) 7 months' salary in compensation for unfair termination at Kshs. 224,000.

Total...Kshs. 285,333

- g) Costs.
- h) Any other relief.

2. The Respondent filed its Statement of Response on 21st April 2015. Its position is that the Claimant was its Employee. His contract was terminated by the Respondent on 15th December 2014, on account of redundancy. The Respondent was down-scaling its tilapia fish, rabbit

and chicks farming business. The Claimant was informed therefore, that his services were no longer required. He was paid salary for 21 days worked in December 2014. The Respondent prays that the Claim is dismissed with costs to the Respondent.

3. The Claimant gave evidence and rested his case, on 3rd October 2016. The Respondent gave evidence through its Director Daniel Sandays, on 21st February 2018 when hearing closed. The matter was last mentioned on 23rd July 2018, when Parties confirmed filing of Submissions.

4. The Claimant confirmed in his oral evidence, particulars of his employment with the Respondent, as contained in his Statement of Claim, and contract of employment on record. His contract was terminated by the Respondent on 15th December 2014. The reason for the decision was not clearly spelt out to him. There was no letter of termination. He was called by the 2 Directors and his Supervisor, and informed his services were no longer required. He was paid Kshs. 18,000 in January 2015. He did not receive any notice of redundancy. Cross-examined, the Claimant conceded he was probation at the time of termination. It was not 6 months' probation. He did not see the Employee Handbook which has a clause on probation of 6 months. He was not employed for a specific project. He was in charge of plant and husbandry. He was involved in rabbit farming, not tilapia and chicks farming. He was contracted for 1 year. He seeks compensation for 7 months left in his contract. He had worked for about 4 months at the time of termination. Redirected, the Claimant told the Court he saw the Employee Handbook for the first time in Court.

5. Daniel Sandays testified that the Claimant received Employee Handbook on recruitment. The project undertaken by the Respondent was not viable. This is shown in Respondent's Bank Statement for January 2015. The Respondent decided to do away with the project in respect of which the Claimant had been employed. He was paid Kshs. 18,129 for 21 days worked in December 2014. He was still on probation and had worked for about 4 months. He is not entitled to the prayers sought.

The Court Finds:-

6. The Claimant was employed by the Respondent as Farm Manager/ ICS Field Assistant, on 4th August 2014. Although there is a letter exhibited by the Respondent, dated 15th December 2014, alleging termination was on 15th December 2014, the Respondent states it paid Claimant salary for 21 days worked in December 2014. This would push the date of termination later than 15th December 2014. The Claimant states he was summoned on 15th December 2014 by the Directors and told there was no more work. The Court adopts the date given by the Claimant, and contained in redundancy letter, as the date of termination- 15th December 2014.

7. The Claimant signed his contract of employment, on 4th August 2014. He does not dispute the presence of this contract, or that he read, understood and signed the contract.

8. The contract refers to Employee Handbook. Sandays testified the Claimant was availed the Employee Handbook, at the time he joined the Respondent. There is a letter signed by both Directors, written in general terms, welcoming the Claimant to the Respondent. The Claimant was advised to carefully study the Employee Handbook. The material on record strongly suggests to the Court that the Claimant was aware of the existence of the Employee Handbook. The 1st clause in the Employee Handbook is on probationary period. It states that the Claimant would work on probation for the 1st 6 months.

9. There is no express clause on probationary period, but the Claimant must have read the termination clause, in his contract of employment. The clause refers to termination notice of 7 days, given by the Respondent to the Claimant, upon completion of 1 month under probation. The clause refers also to successful completion of probationary period with regard to notice issued by the Claimant to the Respondent. It is clear from the termination clause that the Claimant, was to serve a probationary period. The specific period is given in the Employee Handbook as 6 months.

10. There is no dispute that the Claimant worked for about 4 months. He was still on probation when his contract was terminated. The law applicable to him is Section 42 of the Employment Act 2007. The Respondent did not have any obligation to give reason, or reasons for termination, under this law. It was not necessary that the Claimant is informed his position had become redundant. It is not material in determining this claim, whether there was a redundancy situation, and whether termination was in compliance with Section 40 of the Employment Act. The Claimant was on probation, and the Respondent was at liberty to terminate the contract, in adherence to the terms of termination given in the contract. The Court adopts **Cause Number 1068 of 2012 between Daniel Jalang'o & Another v. Amicabre Travel Services Limited [2014] e-KLR**, in this holding.

11. The main issue should be whether the Respondent gave the Claimant requisite notice of termination, under the contract and section 42 [4] of the Employment Act. There is no evidence that the Respondent issued the Claimant 7 days' notice, or paid 7 days' salary to the Claimant in lieu of notice. To this extent, termination was unlawful. **The Claimant is granted 7 days' salary as notice pay, at Kshs. 8,615.**

12. The contract stipulated that in event of termination of employment, the Claimant would be entitled to 1/12th of the annual leave entitlement for each completed month of service. The Claimant had completed at least 4 months of employment at the time of termination. He was entitled to annual leave of 28 days. **He is entitled to annual leave under this contractual clause based on 4 months worked, calculated at Kshs. 11, 446.**

13. The Respondent states that the Claimant was paid Kshs. 18,129 as salary for 21 days worked in December 2014. The Court has, as stated above, not been able to agree with the Respondent on the number of day worked by the Claimant in December 2014. The Claimant prays for salary for 15 days worked in December 2014. He told the Court he was paid Kshs. 18,000 in January 2015. Bank Statements supplied by the Respondent suggest the sum paid to the Claimant was Kshs. 18,129. 15 days' salary, in the calculation of the Court, comes to about the same amount as paid to the Claimant. There is nothing left to be paid for days worked in December 2014.

14. **No order on costs.**

15. *Interest allowed at 14% per annum from the date of Judgment till payment is made in full.*

IN SUM, IT IS ORDERED:-

a) It is declared termination was unlawful.

b) The Respondent shall pay to the Claimant 7 days' salary in lieu of notice at Kshs. 8,615 and annual leave pay at Kshs. 11,446 –total Kshs. 20,061.

c) No order on the costs.

d) Interest granted at 14% per annum from the date of Judgment till payment is made in full.

Dated and delivered at Mombasa this 25th day of October 2018

James Rika

Judge