



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO.1453 OF 2013

ALFRED INYANJE ISATHRO.....CLAIMANT

VERSUS

WORLD EARTH SPA LIMITED.....1ST RESPONDENT

COLLETTE QURESHI.....2ND RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 19th October, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 09.09.2013 through S.K. Opiyo & Company Advocates. He prayed for judgment against the respondent for:

- a) Payment of full compensation of 12 months wage for loss of employment as provided for under section 49(1) (c) of the Employment Act, 2007 at Kshs.11, 458 x 12 making Kshs.137, 496.00.
- b) A month's pay in lieu of notice Kshs.11, 458.00.
- c) Prorate leave for 10 months Kshs.6, 876.00.
- d) Service pay for 2 years 30 days Kshs.11, 458.00.
- e) Salary for August 2013 Kshs.11, 458.00.
- f) Total amount claimed Kshs.178, 746.00.
- g) Any other award or benefit the Honourable Court deems fit to grant in the circumstances of this case.
- h) The respondent to pay costs of the suit.

The response to the claim was filed on 17.09.2015 through Robson Harris & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs in favour of the respondent.

It is not in dispute that the claimant was orally employed by the respondent on 03.10.2011 as a messenger. It is also not in dispute that the employment was terminated by the letter dated 01.09.2013 on account of the allegations that the claimant had been given final warning letter and had displayed behaviour which otherwise amounted to gross misconduct. The termination letter offered to pay the claimant terminal dues calculated at the net of Kshs. 33, 541.00 being full salary for August 2013 which had been paid in cash; a month's salary in lieu of termination notice; 14 pending leave days; 1.67 severance pay at 50% p.a of monthly basic salary earned; less taxes,

The only issue for determination is whether the claimant is entitled to the remedies as prayed for. The claimant testified to support his case while the respondent called one witness (RW) the accountant, Moses Wachira. The court has considered the pleadings, evidence and submissions filed for parties and make the following findings:

- a) The claimant testified that on 01.09.2013 he was summoned for August pay and in the process he was given the letter of

termination of his employment dated 01.09.2013. His evidence was that prior to the letter he was not aware of misconduct or warning on his part as was alleged in the letter. A dispute was reported to the trade union but there was no amicable resolution. The claimant testified that he used his private motor bike to undertake the respondent's official duties. In the circumstances he had a grievance that the 1st respondent as the employer compensates him in that regard. The claimant testified that the reason for termination was that he raised the grievance. RW testified that he could not recall the dates of the warning letters referred to in the termination letter. Further, RW testified that the warning letters had not been filed or produced for the respondents' testimony. The Court has evaluated the evidence and returns that there is no warning letter that was delivered to the claimant prior to the termination letter. The alleged misconduct is therefore found not to have existed. In any event, if the respondent desired to terminate the claimant's employment on account of misconduct, then the due process was a notice and hearing as envisaged in section 43 of the Employment Act, 2007 but which was not invoked. RW confirmed the claimant was a messenger and the Court finds that it was credible evidence that the claimant had a reasonable and well founded grievance about use of his motor bike on official duties. The Court finds that instead of resolving the grievance amicably, the respondent decided to dismiss the claimant. Such termination based on a grievance founded upon good foundation and that was not irresponsible amounted to unfair termination as per section 46 (h) of the Act and the Court returns as much. The Court further returns that the claimant is entitled to the 12 months' salaries compensation for unfair termination because he desired to continue in employment, he did not contribute to his termination from employment, and the aggravating factor that the reason for termination was unlawful being failure by the respondent to amicably manage the valid grievance the claimant had initiated.

b) The prayers for prorate leave, pay in lieu of termination notice, salary for August 2013, and service pay are found not contested as the respondent had already offered the same in the termination letter and they are statutory entitlements upon termination as per section 35 of the Act. The Court returns that the claimant is entitled as prayed for.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- 1) The respondent to pay the claimant a sum of **Kshs. 178, 746.00** by 01.12.2018 failing interest to be payable thereon at Court rates from the date of this judgment till full payment.
- 2) The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at **Nairobi** this **Friday 19th October, 2018**.

BYRAM ONGAYA

JUDGE