



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT KISUMU

CAUSE NUMBER 257 OF 2013

BETWEEN

1. ELIUD BARASA

2. MOHAMMED ASMAN WERUNGA.....CLAIMANTS

VERSUS

INTER-CHRISTIAN FELLOWSHIP

EVANGELISM MISSION.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Hussein Indimuli Advocate for the Claimants

J.S.Khakula Advocate for the Respondent, absent

JUDGMENT

1. The Claimants filed their Statement of Claim on 30th August 2013. They state they were employed by the Respondent. The 1st Claimant was employed as a Driver, on 19th February 2007. His starting salary was Kshs. 8,950 and Kshs. 1,300 as house allowance. His letter of appointment is on record. His salary was Kshs. 17,047 all-inclusive as at the date of termination.

2. The 2nd Claimant was employed on 16th January 2002 as a Mechanic / Driver. His first salary was Kshs. 7,000. As of the date of termination, he earned a monthly salary of Kshs. 19,550.

3. The Respondent terminated the 1st Claimant's contract, on 8th June 2010 and 2nd Claimant's on 30th April 2009. They state they were not issued notice, and no reason was given, justifying the decision. They were owed salaries of 6 months and 5 months respectively as of the date of termination.

4. They referred the dispute to the Ministry of Labour through their trade union, Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers [KUDHEIHA] on 6th April 2011. A Conciliator was appointed by the Chief Industrial Relations Officer on 28th July 2011. The conciliation process did not yield settlement. Certificate of Disagreement issued on 6th May 2013.

5. The Respondent filed a Statement of Response on 4th October 2013. It is conceded the Claimants were employed by the Respondent. They were summarily dismissed and are not entitled to the remedies sought. The Claimants were involved in acts of dishonesty with regard to handling of Respondent's motor vehicle. The dispute was referred to the Ministry of Labour. The Labour Officer concluded dismissal was fair, and advised the Claimants accordingly. The Respondent did not attend Court on the hearing date.

6. The Claimants gave evidence on 8th November 2018 during the Court's service fortnight. They confirmed that they were employed by the Respondent, on terms and conditions of employment stated in their Pleadings. They confirmed that they reported the dispute to the Labour Office, and there was no settlement. They adopted their Pleadings and Documents on record as their evidence.

The Court Finds:-

7. The Claimants have shown through their letters of appointment, that they were employed as Driver and Mechanic, by the Respondent, on the dates shown in the letters of appointment. Their monthly salaries as of the date of termination are not disputed. It is not disputed that the Respondent terminated Claimants' contracts as shown in the letters of termination on record. There was no notice issued. There are no letters to show cause exhibited by the Respondent, calling on the Claimants to give reason why they should not be disciplined for any reason. There is no record of a disciplinary hearing. The Claimants state they were owed arrears of salary. The Respondent has not exhibited employment records contradicting the Claimants.

8. The dispute was referred to the Ministry of Labour. It is not true that the Conciliator found the Claimants were fairly dismissed, and rejected their Claim. The Certificate of Disagreement on record does not reflect this.

9. Having considered the Pleadings, Documents and Oral Evidence presented by the Claimants, the Court is satisfied that the Claimants were unfairly dismissed. Termination was unfair in substance and procedure under Sections 41, 43 and 45 of the Employment Act 2007.

10. The Court does not think however that the remedy of reinstatement, pleaded by the Claimants, is regular, lawful, practicable, or reasonable. They left employment over 8 years ago. The law states reinstatement shall not be available after 3 years from the date of termination. It is likely the Parties have moved on with their lives. It is not possible to rebuild an employment relationship based on trust and confidence, after so many years have passed. The most appropriate remedy is compensation, not reinstatement.

11. ***The Claimants are each awarded equivalent of 12 months' salary in compensation for unfair termination.***

12. ***They are granted arrears of salaries of 6 months and 5 months respectively.***

13. ***They shall each have 1 month salary in lieu of notice.***

14. ***Costs to the Claimant.***

15. ***Interest allowed at 14 % per annum from the date of Judgment.***

IN SUM, IT IS ORDERED:-

a) It is declared termination was unfair.

b) The Respondent shall pay to:- 1st Claimant: equivalent of 12 months' salary in compensation for unfair termination at Kshs. 204,564; 6 months' arrears of salary at Kshs. 102,282; and 1 month salary in lieu of notice at Kshs. 17,047- total Kshs. 323,893. 2nd Claimant: equivalent of 12 months' salary in compensation for unfair termination at Kshs. 234,600; 5 months' arrears of salary at Kshs. 97,750; and 1 month salary in lieu of notice at Kshs. 19,550- total Kshs.351,900.

c) Costs to the Claimants.

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

Dated and delivered at Kisumu this 16th day of November, 2018.

James Rika

Judge