



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 2521 OF 2012

(Before Hon. Justice Mathews N. Nduma)

ALPHONCE KYALO MULI.....CLAIMANT

VERSUS

ALLPACK INDUSTRIES LIMITED.....RESPONDENT

J U D G M E N T

1. The suit was brought by way of a Memorandum of Claim on 18th December, 2012 seeking compensation for unfair and unlawful termination of employment and payment of terminal benefits set out in paragraphs 12 to 16 of the Memorandum of Claim.
2. The Respondent filed a Memorandum of Reply on 11th September, 2013 in which the particulars of employment of the Claimant are admitted but denies the reliefs sought by the Claimant.
3. The Claimant testified under oath but the Respondent did not adduce any evidence in rebuttal of the Claim.

Facts of the Claim

4. The Claimant was employed by the Respondent as a general labourer on 3rd February, 2009 at a monthly salary of Kshs.5,655. The Claimant states that his salary was not reviewed in terms of Regulation of Wages Amendment Order 1 for years 2007 to 2012 thus he was underpaid and seeks payment of the underpayments set out in the Memorandum of Claim.
5. That on 18th January, 2012 the Claimant was summarily dismissed by the Respondent verbally and was not given any explanation or the reason for the dismissal.
6. The Claimant states that the action by the Human Resource Manager was callous, inhumane, unfair and amounted to unfair labour practice. The Claimant seeks maximum compensation equivalent to 12 months' salary for the unlawful dismissal. The Claimant prays for payment in lieu of notice; payment in lieu of annual leave not taken for three years; payment in respect of rest days not given and not paid every week and payment in respect of public holidays worked without payment of double salary in terms of the law. The figures are set out in the Memorandum of Claim.
7. The Respondent failed to offer any evidence in rebuttal after the Claimant testified in Chief and was cross examined by Mr. Wanda for the Respondent.
8. The court finds that the Claimant has proved that he is owed by the Respondent all the terminal benefits set out in the Memorandum of Claim. The Claims have been proved on a balance of probabilities vide the uncontroverted evidence by the Claimant. The court awards the Claimant as prayed.

Compensation

9. With respect to the prayer for a declaration that the summary dismissal of the Claimant was unlawful and unfair. The Claimant has also discharged the onus placed on him by section 47(5) of the Employment Act, 2007 to show that the Summary Dismissal was without lawful cause and the Respondent did not follow a fair procedure in dismissing the Claimant from employment. The action by the Respondent violated sections 41, 43 and 45 of the Employment Act, 2007 and the Claimant is entitled to compensation in terms of sections 49(1)(c) as read with 49(4) of the Act.
10. In this regard, the Claimant had faithfully served the Respondent for 3 years. He intended to continue working, was not paid terminal

benefits upon termination. He suffered loss and damages upon being dismissed without notice and without being heard. The court awards the Claimant five months' salary in compensation for the dismissal in the sum of Kshs.(16,965 x 5) Kshs.84,825.

11. Judgment is entered in favour of the Claimant as against the Respondent as follows:-

a) Compensation	Kshs.84,825.
b) Notice Pay	Kshs.16,965.
c) In lieu of leave	Kshs.16,965.
d) For untaken Rest Days	Kshs.58,290
e) For unpaid Public Holidays	Kshs.11,745
Total Award	Kshs.188,790

f) The award is payable with interest at court rates from date of filing suit in respect of (b) – (e) above and from date of judgment in respect of (a) above.

g) Respondent to pay costs of the suit.

Judgment Dated and Signed in Kisumu this 25th day of October, 2018

Mathews N. Nduma

Judge

Delivered and signed in Nairobi this 2nd day of November, 2018

Maureen Onyango

Judge

Appearances

Erick Ntabo & Co. Advocates for Claimant

Soita & Saende for Respondent

Daniel Ngumbi – Court Clerk