



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 861 OF 2013

CHARLES MUMO MUNYAMBU.....CLAIMANT

VERSUS

NATION MEDIA GROUP.....RESPONDENT

JUDGMENT

1. Charles Mumo Munyambu (Claimant) was offered temporary employment as Sales and Distribution Assistant by Nation Media Group Ltd (Respondent) through a letter dated 4 January 2011.
2. The letter of offer expressly provided that the contract would run up to 10 February 2012.
3. On 26 May 2011, in the course of the employment, the Claimant was involved in an accident and sustained serious injuries and only resumed work in September 2011.
4. On 7 June 2013, the Claimant commenced legal proceedings against the Respondent alleging that his contract had been unlawfully terminated in mid-January 2012. The Claimant also alleged breach of contract.
5. The Respondent did not file a Response or any documents. The Cause was heard on 9 July 2018 when the Claimant testified and closed his case. The Respondent did not lead any evidence.
6. The Claimant did not file submissions as directed while the Respondent filed its submissions on 10 September 2018.
7. The Court has considered the pleadings, evidence and submissions and condensed the questions for determination as, *whether there was unfair termination of employment or expiry of contract, whether there was breach of contract and appropriate remedies/orders.*

Unfair termination or expiry of contract

8. It is not in dispute that the contract was to lapse on 10 February 2012 and was terminable by 2 weeks' notice. It is also not disputed that the contract did not provide for renewal. It is also agreed that the Claimant was paid wages for January 2012.
9. The Claimant's testimony was that in mid-January 2012 he got a call from his supervisor who informed him that his services were no longer required because he could no longer ride a motor bike which was necessary for his duties. He stated that there was no notice of termination or a hearing.
10. The Claimant's testimony as to the circumstances of separation remained uncontroverted, and the Court will therefore find that the employment was verbally terminated in mid-January 2012 in violation of section 35(1)(c) of the Employment Act, 2007, and before it had expired.
11. For the unfair termination, the Court finds that the Claimant was entitled to the equivalent of 1 month pay in lieu of notice (and not 2 weeks' pay in lieu of notice) as he was paid by the month – see section 35(1)(c) of the Employment Act, 2007.
12. And in respect of compensation, the Court will assess the same as equivalent to 2 months gross wages due to the length of service (gross wage was Kshs 15,000/-).

Breach of contract

Annual leave

13. The Claimant was entitled to 24 days annual leave with full pay and his testimony that he did not go on the leave was not rebutted by production of leave records as contemplated by section 10(3) of the Employment Act, 2007.

14. The Claimant was entitled to the leave and in lieu thereof commutation into cash.

Wages for February 2012

15. Had the Claimant worked up to 10 February 2012, he would have been entitled to the earned wages. Due to the premature termination of the contract, the Court finds no breach in respect to the wages.

Conclusion and Orders

16. The Court finds and holds that the Claimant's employment was unfairly terminated and awards him

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|---------------------------|----------------------|
| (a) Pay in lieu of notice | Kshs 15,000/- |
| (b) Compensation | Kshs 30,000/- |
| (c) Leave | Kshs 15,000/- |
| TOTAL | Kshs 60,000/- |

17. Claimant is denied costs for failing to file/serve submissions.

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

Radido Stephen

Judge

Appearances

For Claimant Mr. Gaya instructed by GNK & Associates LLP Advocates

For Respondent Mr. Mungai instructed by Mohamed & Muigai Advocates

Court Assistant Lindsey