



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.1025 OF 2014

JASON MADEGWA KISIA.....CLAIMANT

- VERSUS -

HALL EQUITORIAL LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 2nd November, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 02.06.2017 through Elkington & Associates. The claimant prayed for judgment against the respondent for:

- a. Gratuity Kshs. 2, 076, 923.066
- b. 12 months' salary for unfair termination Kshs.1, 200, 000.00.
- c. Unpaid leave allowance of Kshs.950, 000.00.
- d. Unpaid salary for January 2017 Kshs. 100,000.00.
- e. One month's salary in lieu of notice Kshs. 100,000.00.
- f. General damages for breach of contract based on loss of expected earnings for the remaining years to retirement.
- g. Any other relief that the Honourable Court may deem fit to grant.
- h. Costs of the claim.

Despite service the respondent did not enter appearance, file defence, or attend the hearing.

The claimant testified that by the letter dated 25.05.1979 the respondent employed the claimant as a messenger effective 28.05.1979. The claimant served well with a clean record and for a long time.

The evidence is that the claimant was asked to go for 26 days of leave in December 2016. The leave ended on 26.01.2017 and his boss one Kurji summoned the claimant and told the claimant that they had to part ways because he felt that the claimant had to leave. The claimant agreed that he could leave subject to final dues. The claimant was asked to write down his terminal dues and he requested for time. The following day on 27.01.2017 the claimant brought his computation and testified that Kurji told the claimant that Kurji would see to it that the claimant was paid. The claimant did not file a copy of the terminal dues he gave to Kurji and did not by oral evidence give the details thereof. In the mean time, Kurji told the claimant that the services had been terminated. The claimant had served the respondent 36 years.

To answer the **1st issue** for determination the Court returns that there was no unfair termination because the claimant has confirmed that he agreed to the termination of the contract of employment subject to payment of the terminal dues which he computed and gave to the respondent. The prayer for a declaration and compensation in that regard will fail.

To answer the **2nd issue** for determination the Court returns that the claimant is not entitled to gratuity because he has not established the contractual basis for the claim and further his payslip shows he was a member of NSSF and service pay or gratuity will not be available per section 35 (6) of the Employment Act, 2007.

The **3rd issue** is whether the claimant is entitled to the other remedies as prayed for. The Court makes findings as follows:

- a. In the letter dated 15.03.2017 the respondent admitted that the claimant had 22 leave days and he is awarded **Kshs.100, 000.00** in lieu of the leave days. The claim for leave allowance as prayed for has not been established and it will fail.
- b. In the letter of 15.03.2017 the respondent admits to pay 27 days worked in January 2017 and the claimant is awarded **Kshs. 90, 000.00** prorata.
- c. The claimant is entitled to one month pay in lieu of termination notice per terms of the letter of confirmation of employment dated 31.10.1979 and taking into account the agreement to separate as per the claimant's testimony.
- d. The respondent will pay costs of the suit.

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

- a. Payment of **Kshs.190, 000.00** by 15.12.2018 failing interest to be payable thereon at Court rates from the date of the separation 27.01.2017 till full payment.
- b. The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at **Nairobi** this **Friday 2nd November, 2018.**

BYRAM ONGAYA

JUDGE