



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. 174 OF 2013

(Before Hon. Lady Justice Maureen Onyango)

RICHARD MAKAU KYENGO.....CLAIMANT

VERSUS

THE HOOD RESTAURANT.....RESPONDENT

JUDGMENT

By memorandum of claim dated 6th February 2013, the claimant avers that his employment was terminated unfairly by the respondent. He prays for the following remedies –

- a) A declaration that the termination was unlawful, untimely;
 - b) An order that the respondent pay the claimant his dues and benefits of Kshs. 105,387.00; as tabulated below.
 - i) Service pay Kshs.24,267
 - ii) Salary in lieu of notice Kshs.5,200
 - iii) Compensation for loss of earnings Kshs.62,400
 - iv) Leave days accrued for 3 years Kshs.10,920
 - v) Days Worked Kshs.2,600
- Total Kshs.105.387**
- c) Costs of the claim and interest

The respondent was served but did not file appearance or defence and further did not attend court for hearing.

At the hearing the claimant testified that he was employed by the respondent as a waiter on 1st April 2004 and was dismissed on 15th September 2011. The reasons for dismissal was that he had obtained a statement from NSSF which indicated that the respondent had not been remitting NSSF even though deducted from his salary. When he presented the statement to the employer and asked that the payments be made he was told not to report for work the following day.

The claimant testified that the dismissal was unfair because he was not given any reason for dismissal and was not paid for days worked. His last salary was Kshs.5,200.

The claimant testified that after termination, he reported to the Labour Officer but the respondent did not respond to the letters from the Labour Officer. He prays for judgment as set out in his claim.

Determination

The claimant's evidence is not controverted as the respondent did not file any response to the claim or attend court for the hearing. Further, the respondent did not respond to the letters from the Labour Office which reflect that a Mr. Mwaura whose telephone number is stated as 0734865998 was called by the Labour Officer and promised to pay the claimant but did not pay.

I am satisfied that the claimant has proved his case on a balance of probabilities and declare the termination of his employment by the respondent unfair.

Remedies

The claimant prayed for service pay which I award him at Kshs.18,200 being 15 days salary for 7 completed years of service. The claimant further prayed for one month's salary in lieu of notice which I award him at Kshs.5,200. The claimant prayed for annual leave accrued for 3 years. He testified that he took leave only once during the period he was in service. I award him pay in lieu of leave for three years in the sum of Kshs.10,920 as prayed.

The claimant further prayed for salary for 15 days worked at Kshs.2,600 which I award him.

The claimant prayed for compensation in the sum of Kshs.62,400 being 12 months' salary. Having worked for only 7 years and 4 months and taking into account the reasons for termination, I award him 7 months' salary as compensation at Kshs.36,400.

The respondent shall pay claimant's costs and the decretal sum shall attract interest at court rates from date of judgment.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 2ND DAY OF NOVEMBER 2018

MAUREEN ONYANGO

JUDGE