



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO.725 OF 2014

SILAS OKOME.....CLAIMANT

VERSUS

PANESARS KENYA LIMITED.....RESPONDENT

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

JUDGMENT

The claimant filed the memorandum of claim on 06.05.2014 in person. Subsequently the claimant appointed Omasa Omosa & Company Advocates to act in the matter. The claimant prayed for judgment against the respondent for:

- a) Payment of a sum of Kshs. 3, 271, 575.00 being Kshs.68, 400.00 one month salary in lieu of notice; 17 days worked in June 22, 575.00; service pay for 15.5 years of service Kshs.530, 100.00; and house allowance Kshs.742, 140.00.
- b) 12 months' salaries in compensation for unfair termination Kshs. 820, 800.00.
- c) Costs of the suit.
- d) Interest.

Despite service the respondent failed to enter appearance, to file a defence, and to attend at the hearing.

The claimant testified that the respondent employed him as a curving carpenter in January 1997 and his last monthly pay was Kshs.68, 400.00. On 17.06.2013 the workers including the claimant demanded that the management considers them for salary increment. The respondent's director then told the claimant that in view of his claims for salary increment, he should not report at work the following day.

The only issue for determination is whether the claimant is entitled as prayed for. The Court makes the following findings.

- a) The claimant was dismissed for initiating a grievance about salary increment which the Court finds that it did not amount to an irresponsible complaint and it was not without foundation as envisaged in section 46 (h) of the Employment Act, 2007. The Court finds that the reason for termination was unlawful and unfair under the section. The termination was unfair. The claimant had served for over 15 years. He did not contribute to the termination and he desired to continue in employment. There is no mitigating factor before the Court and the claimant is awarded **Kshs.820, 800.00** being maximum compensation under section 49 of the Act and as prayed for.
- b) The termination was without notice and the Court returns that the claimant is entitled to one month salary in lieu of notice as prayed for being **Kshs. 68, 400.00**.
- c) The claimant is entitled to pay for work up to 17.06.2013 and is awarded **Kshs.22, 575.00** as prayed for.
- d) The claimant's evidence was that he was not given annual leave throughout the service of 15.5 years. He is entitled to pay in lieu of annual leave per section 28 of the Act being **Kshs.742, 140.00** as prayed for.
- e) The claimant testified that NSSF was remitted for only 2 months and there being no other pension arrangement, the Court awards the claimant service pay **Kshs.530, 100.00** as reasonable in the circumstances of the case and as was prayed for.

f) The parties appear to have agreed upon a consolidated pay. There was no grievance about house allowance throughout the service. The prayer for house allowance will therefore fail.

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

a) Payment of the sum of **Kshs.2, 184, 015.00** by 31. 12.2018 failing interest to run at Court rates from the date of this judgment 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