



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1574 OF 2012

(Before Hon. Lady Justice Hellen S. Wasilwa on 20th December, 2018)

JULIUS MBUVI NZIOKA.....CLAIMANT

VERSUS

ALPHINE COOLERS LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant herein filed his Memorandum of Claim on 6/9/2012 through Anthony M. Mulekyo Advocates. The Claimant's case is that he was employed by the Respondents from 1998 till 17th May 2010 serving as a Mechanic and earning a monthly salary of 16,200/=.

2. The Claimant avers that in November 2007, the Claimant agreed with the Respondent that further to his mechanic job, he would be doing electrical wiring at a monthly payment of Kshs.3,000/= which he did till 2009 when the Respondent hired an independent electrician for wiring.

3. The Claimant avers that he served the Respondent through the years diligently and faithfully until 17/5/2010 when the Respondent summarily dismissed him from work for unexplained reasons and without any warning or an opportunity to defend himself.

4. He contends that the said dismissal was unlawful, irregular and violated his rights. The Claimant seeks the following prayers:-

1. Salary for May 2010 = 16,200/=

2. One month salary in lieu of notice = 16,200/=

3. Service pay for 10 years = 81,000/=

4. Outstanding wring fees for the whole of 2008 at Kshs.3000/= per month = 24,000/=

5. Release of his working tools.

6. Prorata leave for 2010 – 8,100/=

7. General damages

5. In cross-examination, the Claimant indicated that he has evidence that he did the wiring job. He denies he ever saw the warning letter Annex 4 of the Respondent's documents. He also states that he was never called to any disciplinary hearing. He denies attending any meeting as per Annex 5 of the Respondent's documents.

6. He also stated that he was a member of NHIF and NSSF. In re-examination, he states that he was dismissed on 17/5/2010 and the meeting was on 24.6.2010. He indicated that the book showing he did wring work is signed by the Transport Manager.

7. The Respondents filed their defence through Mucheru Law LLP. They however never called any oral evidence in Court. They therefore left the Claimant's case uncontroverted.

8. I have examined all evidence on record. There is evidence that the Claimant was an employee of the Respondent but the circumstances under which he left employment is not clear.

9. In the absence of any evidence from the Claimant, I do find that he was dismissed unfairly by the Respondent for no apparent reason and without being accorded a fair hearing. I therefore find for Claimant and I award him as follows:-

1. 1 month salary in lieu of notice = 16,200/=

2. Salary for 17 days worked in May 2010 = $17/30 \times 16,200 = 9,180/=$

3. Prorata leave for 2010 – 6,750/=

4. Outstanding wring fees for 2008 as prayed = 24,000/=

5. 8 months' salary as compensation for unlawful dismissal = $8 \times 16200 = 129,600/=$

TOTAL = 185,730/=

6. The Respondent will pay costs of this suit plus interest at Court rate with effect from the date of this judgement.

Dated and delivered in open Court this 20th day of December, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Kilonzo holding brief Mwinzi for Claimant – Present

Respondent – Absent