



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 98 OF 2016**

*(Before Hon. Justice Mathews N. Nduma)*

**RICHARD OKOTH OCHUNG.....CLAIMANT**

**VERSUS**

**H. S. AMIN & COMPANY LIMITED.....RESPONDENT**

**J U D G M E N T**

1. The Claimant vide a Statement of Claim filed on 21<sup>st</sup> April, 2016 seeks compensation for unlawful termination of employment and terminal benefits to wit:-

- (a) One month salary in lieu of notice Kshs.13,606.
- (b) Untaken annual leave for the year 2014 and 2015 Kshs.19,048.
- (c) Severance Pay for 12 years completed years of service Kshs.81,540 and
- (d) Salary arrears for August 2015 Kshs.13,606 and seven days worked in September Kshs.3,171.

2. The Claimant was employed by the Respondent on 2<sup>nd</sup> May, 2002 as a turn boy and worked continuously until he was summarily dismissed on 8<sup>th</sup> September, 2015. The dismissal was verbal, without notice or payment in lieu of notice. No terminal benefits were paid either.

3. The claimant testified under oath and stated that his salary was Kshs.13,606 a month. That on 8<sup>th</sup> September, 2015 he was from Nairobi and after off-loading the goods from the lorry the employer declined to pay his salary for the month of August, 2015. The Respondent told him he could go wherever he wanted to go. The Claimant reported the matter to the Ministry of Labour. The office did not assist him to get his dues. The Claimant stated that he was owed leave days for 2014 and 2015. He was entitled to 21 days leave per year. The Claimant said that he was not paid for the days worked in the month of September. He claims service gratuity for 12 years served and costs of the suit. Under cross examination, the Claimant explained that he was sent home by Mr. H. S. Amin, a Director of the Respondent. The Claimant said that he was dismissed for no reason and he did not wish to return to work. He prayed to be awarded as set out in the Statement of Claim.

4. Though the Respondent had filed a statement of defence to the claim, the Respondent did not call any witness to rebut the evidence by the Claimant. The evidence by the Claimant remains uncontroverted. The Claimant has proved his case regarding none payment of terminal benefits including notice pay, leave pay and arrear salary on a balance of probabilities. The Claimant produced a pay slip for the month of July 2015, which shows that his basic pay was Kshs.11,831 and house allowance of Kshs.1,775. The pay slip shows that the employer deducted NSSF and NHIF for the Claimant. The Claimant has therefore not proved that he is entitled to payment of service gratuity in terms of section 35 of the Employment Act. This claim is dismissed.

5. With regard to the claim for compensation for unlawful dismissal, the Claimant has proved that he was summarily dismissed when he requested to be paid his salary for the month of August 2015. The dismissal was on 8<sup>th</sup> September, 2015 and therefore it was reasonable for the Claimant to demand payment of his salary. The dismissal was not for a valid reason and the Respondent did not accord the Claimant a hearing before the summary dismissal. The Respondent violated sections 41, 43 and 45 of the Employment Act and the Claimant is entitled to compensation in terms of section 49 (1) (c) and 49 (4) of the Act.

6. The Claimant had served the Respondent for a period of 12 years. He was not paid any terminal benefits upon summary dismissal. The

