



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1126 OF 2014

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

SENATA MARGARETCLAIMANT

-VERSUS-

HOT POINT APPLIANCES (K) LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim on 8/7/2014 through the firm of R. A. Onchuru & Company Advocates alleging non- payment of his terminal benefits and damages for unlawful and wrongful termination of employment.
2. The Claimant's case is that he was employed by the Respondent as a casual worker in the year 2012 earning a gross salary of Kshs.11,500/= per month. He avers that in 2013, the Respondent placed him on an annual contract at which he was earning a gross salary of Kshs.20,358/=.
3. He avers that on or about 5th November 2013 he was on duty delivering the Respondent's items to a client along Ngong road. The Respondent's delivery van was involved in an accident and he sustained serious injuries. He sought for 14 days leave same month.
4. The Claimant avers that on 28th November, 2013, he was forcefully ordered to report back to work despite not having fully recovered. He stated that he continued to be under constant treatment and observation of his doctor for the subsequent months of December 2013, January 2014 and February 2014.
5. The Claimant avers that in February 2014, he took a 14 days leave from work. On resumption of his duties in March 2014, the Respondent issued him with a Notice to show cause (NTSC) letter despite giving a reasonable explanation that he was still under treatment and medication.
6. He avers that the Respondent terminated his services and he was never given an opportunity to defend himself. He avers that he was also never issued with any warning or notice before the termination.
7. He avers that the termination was unprocedural and unfair and seeks payment of salary in lieu of notice and compensation for unfair termination.
8. The Respondents filed their defence on 6/8/2014 through Jackson Omwenga & Company Advocates. They denied the claim but aver that the contract between them and the Claimant expired and they did not renew it.
9. The Respondent however failed to call a witness at the time they were scheduled to do so hence the Claimant's case remained uncontroverted.
10. I note that the Claimant was serving the Respondent on a 3 month renewable contract. The contract was to expire on 31.3.2014. The Respondent however terminated the said contract on 11.3.2014 citing various reasons and indicating that they had no intention of renewing it.
11. It is indeed true that the Claimant was serving on a fixed term contract of 3 months. This contract was terminated prematurely on 11th March 2014 when the contract was due to expire on 31.3.2014. Whereas the Respondent chose to terminate this contract, they did it in an unfair manner.

12. It is true that the Respondent had no obligation to renew the contract that was ending on 31.3.2014, the contract could only be terminated after giving a 7 day notice. No notice was issued to the Claimant as he was informed of his last working day on 11.3.2014 on the same day.

13. In the circumstances, I find that the Claimant's contract was terminated unfairly and no notice was issued to him. I therefore find for the Claimant and I award him as follows:-

1. 3 months salary as compensation for unfair termination of contract = 3 x 20,358 = 61,074/

2. 7 days salary as notice = 7/30 x 20,358 = 4,750.2/=

TOTAL= 65,824.2/=

3. The Respondent will also pay costs of this suit plus interest at Court rates 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

Mwamuye holding brief Amatulla for Claimant – Present

Momanyi holding brief for Omwenga for Respondent – Present