



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAKURU**

**CAUSE NO.24 OF 2018**

**ERASTUS KIYABI SIMIYU.....CLAIMANT**

**VERSUS**

**BALAJI FLOWERS.....RESPONDENT**

**JUDGEMENT**

On 2<sup>nd</sup> February, 2018 the claimant filed the Memorandum of Claim and served the respondent on 23<sup>rd</sup> March, 2018. The returns are filed through Affidavit of Service by James Gitau. There was no appearance or defence filed. The court heard the claimant under the provisions of Article 50 of the Constitution read together with the provisions of the Employment and Labour Relations Court Act, 2011 and Rule 15 of the Employment and Labour Relations Court (Procedure) Rules, 2016.

The claimant was employed by the respondent in May, 2014 as a Causal Labourer at the crop production unit. The claimant was paid a daily wage of Ksh.550.00 and cumulatively Ksh.16, 500.00 per month.

In November, 2017 the claimant was verbally dismissed from his employment by the respondent without notice and without hearing or being paid his terminal dues and benefits. No reasons were given for the summary action taken against the claimant.

The claimant is seeking payment of the following dues;

- a) Service pay for 3 years Ksh.24,750.00;
- b) Days worked Ksh.33,000.00;
- c) Notice pay Ksh.16,500.00;
- d) Compensation;
- e) Leave allowance for 3 years Ksh.34,560.00;
- f) Costs.

The claimant testified that on 1<sup>st</sup> May, 2014 he was employed by the respondent as a Security Guard though he had started his employment as a Causal employee. The last wage paid was Ksh.16, 500.00 as a Guard.

In November, 2016 the claimant left work for the day but Vimal the respondent's officer called him back and said he had been dismissed from his employment. On 11<sup>th</sup> November, 2017 the next days the claimant reported back at work at 5pm as was practice and was issued with a notice to show cause issued by the farm manager and that there were instructed not be to granted access at the workplace. When the claimant called Vimal he directed that he should never be seen at the respondent's premises again. The claimant made a report to the labour officer as such action against by the respondent had no basis was not justified and this resulted in termination of employment for no good reason. The respondent refused to attend before the labour officer.

The respondent did not attend the proceedings or file defence to challenge the claims made by the claimant. The claims shall be assessed based on the pleadings, the evidence, written submissions and the applicable law.

In his evidence, the claimant testified that on 11<sup>th</sup> November, 2017 he was issued with a notice to show cause why his employment should

not be termite. He has not filed this notice. In the absence of the defence to submit such a work record, the court is left without the same. In any event even where the claimant was required to show cause by such notice of 11<sup>th</sup> November, 2017 the respondent was required to abode the mandatory provisions of section 41 of the Employment Act, 2007 and ensure he was given a hearing before his employment terminated.

The claimant has also not attached the letter and complaint submitted with the labour office and where the respondent was required to attend. That notwithstanding, where the claimant was dismissed from his employment by the respondent, due process demanded that he be issued with notice and also be heard in his defence. Without any defence, his testimony is the only material left for the use by the court.

There is no challenge to the circumstances leading to termination of employment which is pleaded as without any due process, cause or fairness. Such is contrary to section 35, 41 and 43 of the Employment Act, 2007 and under section 45 of the Act; an unfair termination of employment is redressed by compensation under section 49 of the Act.

Notice pay is due to the claimant based on his last paid wage of Ksh.16, 500.00. compensation is also awarded at one month pay all being Ksh.16, 500.00.

Where leave is earned and not taken in accordance with section 28 of the Employment Act, 2007 the payment in lieu is due all assessed at Ksh.16, 500.00 for the year last served.

The claimant is also seeking pay for days worked at 550 x 60 days but this is clarified in his submissions as being claim for 11 days worked in November, all awarded at Ksh.6, 050.00.

The claimant is seeking payment of service for 3 years. He testified that he was registered with NSSF and such pay is not due.

**Accordingly judgement is hereby entered for the claimant against the respondent for compensation at Ksh.16, 500.00; notice pay Ksh.16, 500.00, leave pay Ksh.16, 500.00; pay for 11 days worked in November, 2017 at Ksh.6, 050.00 and costs of the suit.**

Dated and delivered at Nakuru this 18<sup>th</sup> day of December, 2018.

**M. MBARU JUDGE**

In the presence of: .....