



**REPUBLIC OF KENYA**

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

**CAUSE NO.140 OF 2014**

**BOAZ OMORI OBOP.....CLAIMANT**

**- VERSUS -**

**METAL CROWNS LIMITED..... RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 7<sup>th</sup> December, 2018)

**JUDGMENT**

The claimant filed the statement of claim on 07.02.2014 through Oduor Henry John Advocates. The claimant prayed for judgment against the respondent for:

- a) Payment of Kshs. 171, 429.00 3 months' pay in lieu of notice; Kshs. 171, 429.00 salary in lieu of notice from respondent's sister company Tincan manufacturers ltd; payment of salary for 16 months service to Tincan ltd Kshs. 914, 288.00; refund of Sacco contributions Kshs.43, 000.00; full settlement of Barclays Bank Loan Kshs. 800,000.00, interest on bank loan as determined by the bank; refund of medical bill deducted from salary Kshs. 40, 000.00; compensation for 9 years 9 months of lost service to previous employer prior to being poached into respondent's employment; costs of the suit; and any other money due.
- b) Damages for wrongful and unlawful termination.

The response to the statement of claim was filed on 11.07.2014 through Morara Apiemi & Nyangito Advocates. The respondent prayed that the claim against it be dismissed with costs.

It is not in dispute that the respondent offered the claimant employment as an administration officer effective 14.03.2011 with basic salary of Kshs. 42, 000.00, house allowance of Kshs.8,000.00, other allowances Kshs. 4, 286.00; monthly airtime Kshs.2, 857.00 making a gross of Kshs. 57, 143.00 per month.

The claimant's employment was terminated by the letter dated 09.07.2012 with immediate effect on account that the claimant had not met the company expectations. The claimant's case is that the termination was unfair or unlawful.

The **1<sup>st</sup> issue** for determination is whether the termination was unlawful. It is clear that the termination was on account of alleged poor performance. The respondent failed to serve a notice and accord the claimant a hearing in that regard as provided for in section 41 of the Employment Act, 2007. The Court returns that the termination was therefore unfair for want of due process. Further the respondent did not testify to establish the alleged reason for termination as per sections 47(5) and 43 of the Act. It was therefore unfair termination for a want of valid reason.

The claimant had served the respondent for 9 years and 9 months. The claimant desired to continue in employment. It has not been shown that he contributed to his unfair termination. The Court considers that in consideration of the stated factors, an award of Kshs. 57, 143 per month for 8 months under section 49 of the Employment Act will meet ends of justice in the case making **Kshs.457, 144.00**.

The **2<sup>nd</sup> issue** for determination is whether the claimant is entitled to the other remedies as prayed for and the Court finds as follows:

- a) The prayer for 3 months in lieu of notice from the claimant and v from Tincan Manufacturing Ltd was not justified. There was no evidence that the claimant was employed by Tincan Manufacturing Ltd and which company was not a party to the suit. Further the respondent paid one month in lieu of notice. The prayer will fail as not justified.
- b) The claimant failed to establish the basis for the respondent to refund Sacco contributions and bank loan plus interest. The bank and Sacco were clearly autonomous persons in law and the claimant was liable independent of the respondent for loans and other transactions with such third parties not being privy to the contract of service.

c) The claimant prays for refund of Kshs. 36, 712.00. The respondent's case is that it was deducted under the policy in regard to non-work related injuries. The claimant did not offer evidence or justification to defeat the policy and the prayer will fail.

d) The claimant had no contract of service with the respondent's alleged sister company and where he served for 17 months without appointment. The prayer in that regard will fail.

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

- 1) Payment of **Kshs.457, 144.00** by 31.12.2018 failing interest to run at court rates from the date of this judgment till full payment.
- 2) The respondent to pay the claimant's costs of the suit.

**Signed, dated and delivered in court at Nairobi this Friday 7<sup>th</sup> December, 2018.**

**BYRAM ONGAYA**

**JUDGE**