



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1116 OF 2013

RICHARD MUTSOLI ANGATIA.....CLAIMANT

v

TWO FOUR SEVEN SERVICES LTD.....1st RESPONDENT

ERICK KIMOTHO.....2nd RESPONDENT

JUDGMENT

1. This is an undefended Cause for the Respondents were served with Notice of Summons on 15 August 2013 but failed to file a Response.
2. Despite service of a hearing notice on 12 August 2018, the Respondents failed to attend the hearing on 23 October 2018.
3. The Claimant alleged unfair termination of employment and breach of contract and gave sworn testimony which remained unchallenged/unrebutted.
4. The Claimant filed submissions on 26 October 2018. The Court has considered the pleadings, evidence and submissions.

Unfair termination of employment

5. The Claimant stated that on 28 September 2012, the 2nd Respondent instructed him to leave work because he had allegedly given a work motor cycle to unknown person who was seen riding it along Lower Hill road.
6. The Claimant contended that he was not issued with a show cause letter nor afforded an opportunity to be heard before being sent away.
7. The testimony remaining unchallenged, the Court finds that the termination of the Claimant's employment was unfair in terms of sections 35 and 41 of the Employment Act, 2007.

Pay in lieu of notice

8. The Claimant is therefore entitled to 1 month pay in lieu of notice.

Compensation

9. Further, and considering that the Claimant served for about 1 year, the Court assesses compensation equivalent to 2 months gross wages.

Leave

10. Annual leave of at least 21 days is a statutory entitlement, and in terms of section 10(3) and (7) as read with section 28 of the Employment Act, 2007, the Court will allow this head of claim.

Salary for September 2012

11. The Respondent had offered to pay the Claimant wages for September 2012 in the dismissal letter and without records to show the same was paid, the Court will allow the claim.

Severance pay

12. The Claimant did not prove or suggest that this was a case of redundancy, and therefore *severance pay* is not applicable.

Underpayments

13. The Claimant anchored this head of claim on minimum wages prescribed for a driver (medium sized vehicle).

14. A motor cycle driver, in the view of the Court cannot be equated to a driver of a medium sized vehicle.

Overtime

15. The Claimant did not lay an evidential foundation to overtime work/pay.

Conclusion and Orders

16. The Court finds and holds that the summary dismissal of the Claimant was unfair and awards him

(a) Pay in lieu of Notice Kshs 11,500/-

(b) Compensation Kshs 23,000/-

(c) Pro rata leave Kshs 11,500/-

(d) Salary for Sept 2012 Kshs 11,500/-

TOTAL **Kshs 57,500/-**

17. Claimant to have costs on half scale.

Delivered, dated and signed in Nairobi on this 7th day of December 2018.

Radido Stephen

Judge

Appearances

For Claimant Mr. Kandere instructed by S.K. Opiyo & Co. Advocates

Court Assistant Lindsey