



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 371 OF 2017

(Before Hon. Justice Mathews N. Nduma)

LINET BOSIBORI MORURI.....CLAIMANT

VERSUS

KISII BOTTLERS LIMITED.....RESPONDENT

JUDGMENT

1. The suit was filed on 22nd August, 2017 seeking compensation for unlawful termination of employment and payment of terminal benefits set out in the statement of claim.
2. The Claim was served on the Respondent and Federation of Kenya Employers, entered appearance on 8th September, 2017 but did not file a statement of defence. On 8th March, 2018 the matter was set for formal proof in default of defence, to take place on 19th March, 2019. On 19th March, 2018 M. C Ouma appeared for the Claimant whereas D. M Ouma appeared for Respondent. The Respondent sought time to file a Memorandum of Response and to have the formal proof adjourned.
3. The application was opposed on the basis that 5 months had elapsed since notice of appointment was filed and no defence had been filed. That the Respondent has also not filed any application to file a statement of defence out of time and that this was a hollow application aimed at delaying the suit.
4. The court refused the application for adjournment and the matter proceeded to formal proof.
5. The Claimant testified in support of the claim and stated that he was employed by the Respondent as a merchandiser in May 2013. That he worked continuously for the Respondent until 22nd March, 2017, when the employment was terminated for poor work performance.
6. At the time of termination the Claimant was the retail manager Homa Bay Branch.
7. He told the court that his performance was excellent and an appraisal conducted in October 2016 scored him 70% whereas another conducted in January 2017, rated him at 74%. The documents were produced in court and the Claimant stated that there was no basis whatsoever for the allegations of poor work performance that led to his termination. That the region the Claimant served performed better than others despite the challenges to the company posed by competitors. The Claimant produced sales analysis documents to support his claim. The Claimant testified that the termination was unlawful and unfair and that he be compensated for it and he be paid terminal benefits as claimed.
8. The claim is unopposed. There is no evidence to rebut the able, and credible testimony by the Claimant.
9. The court finds that the allegations that he was underperforming has no basis. The termination of his employment was not for a valid reason and violated sections 43 and 45 of the Employment Act. The Claimant is entitled to compensation in terms of 49(1) (c) and (4) of the Act.
10. In this respect the Claimant earned Kshs.70,000 per month. He had served the Respondent diligently for four (4) years. He was not paid terminal benefits upon termination of employment and was owed arrear salary for December 2016 and January 2017 and entire salary for March 2017. The Claimant was not given notice and was not paid in lieu of notice. The Claimant also claims payment in lieu of 19 days for 2016 and 8 days for 2017.
11. The Claimant also made a claim for payment of overtime and service gratuity.

Compensation

12. The court considers the above factors and grants the Claimant five (5) months salary in compensation for the unlawful and unfair termination of employment in the sum of Kshs.350,000.

Notice Pay

13. The Claimant is awarded Kshs.70,000 in lieu of notice.

Arrear Salary

14. The Claimant is awarded Kshs.90,000 arrear salary.

Overtime/Service Gratuity

15. The Claims for overtime and service gratuity have no merit and are dismissed.

16. In the final analysis, Judgment is entered in favour of the Claimant as against the Respondent as follows:-

(a) Kshs.350,000 being equivalent of 5 months salary in compensation.

(b) Kshs.70,000 in lieu of one month notice.

(c) Kshs.90,000 salary arrears.

Total award Kshs.510,000.

(d) Award in respect of (a) above is payable with interest at court rates from date of judgment whereas award in respect of (b) & (c) above is payable with interest from date of filing suit till payment in full.

(e) Respondent to pay costs of the suit.

Ruling Dated, Signed and delivered this 6th day of December, 2018

Mathews N. Nduma

Judge

Appearances

M. C. Ouma for Claimant

D. M. Ouma for Respondent

Chrispo – Court Clerk