



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 5 OF 2018

(Before Hon. Justice Mathews N. Nduma)

MARK ODHIAMBO ADUNGU.....CLAIMANT

VERSUS

TILE & CARPET CENTRE LIMITED.....RESPONDENT

J U D G M E N T

1. By a statement of claim filed on 10th January, 2018 the Claimant seeks maximum compensation for unlawful and unfair termination of employment and payment of terminal benefits set out under paragraphs 10 and 13 of the Memorandum of Claim.
2. The Memorandum of Claim and Summons to Enter Appearance were served on the Respondent on 24th January, 2018 and an affidavit of service by Nadebu P. Caleb a licensed process server was filed on 13th March, 2018.
3. The Respondent failed to enter appearance nor file a statement of defence and the matter proceeded to formal proof on 4th July, 2018.
4. The Claimant testified under oath in support of the particulars of claim. The Claimant's testimony is uncontroverted and the court finds that the particulars of claim and reliefs sought by the Claimant have been proved on a balance of probabilities.
5. The court awards the Claimant as against the Respondent as follows:-

Compensation

6. The Claimant was employed by the Respondent as a General Labourer on 6th October, 2011. He worked continuously, and diligently until the employment was terminated on 31st January, 2017 for no valid reason and without following a fair procedure. The termination violated sections 41, 43 and 45 of the Employment Act, 2007. The Claimant is entitled to compensation in terms of section 49(1)(c) and (4) of the Act.

7. In this respect, the Claimant lost his job unfairly. He wished to continue working. He did not contribute to the termination. He was not paid any terminal benefits upon termination. He had served diligently for a period of five years. The court awards the Claimant five (5) months' salary in compensation for the unlawful and unfair termination of employment in the sum of Kshs.(13,828.30 x 5)=69,141.

Gratuity

8. The Claimant was a unionsable employee and was covered by clause 18(v) of the Collective Bargaining Agreement between the Respondent and Kenya Building, Construction, Timber and Furniture Industries Employees Union. Accordingly, the Claimant is entitled to gratuity calculated at 20 days salary for each completed year of service in the sum of Kshs.61,084.35.

Notice

9. The Claimant was not given termination notice nor was he paid in lieu thereof. The claimant is awarded one month salary in lieu of notice in the sum of Kshs.18,352.80.

Leave Pay

10. The Claimant did not go on leave in the year 2016 and was not paid in lieu thereof. The court awards the Claimant Kshs.5,293.93 in lieu

of Leave days not taken.

Overtime

11. The Claimant worked 19 days overtime in January, 2017 and was not paid in respect thereof the Claimant is awarded Kshs.11,622.87 in respect of overtime.

Leave Travelling Allowance

12. The Claimant did not go on leave in 2016 and is not entitled to leave travelling allowance claimed. The claim of Kshs.2,500 is dismissed.

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

a. Kshs.69,141 in compensation.

b. Kshs.61,084.35 Gratuity.

c. Kshs.18,352.80 Notice Pay.

d. Kshs.5,293.93 in lieu of Leave.

e. Kshs.11,62.87 Overtime.

Total award –Kshs.165,494.95

f. Award is payable with interest at court rates from date of filing suit in respect of (b) – (e) above and from date of Judgment in respect of (a) above till payment in full.

g. Respondent to pay costs of the suit.

Dated, Signed and Delivered in Kisumu this 6th day of December, 2018

Mathews N. Nduma

Judge

Appearances

Mr. Ouma Njoga for Claimant

Chrispo – Court Clerk