



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 728 OF 2015

FREDRICK OUMA

OGWAYO.....CLAIMANT

VS

TOWNCHIC LIMITED.....

.....RESPONDENT

JUDGMENT

Introduction

1. By a Memorandum of Claim dated 30th April 2015 and filed in Court on even date the Claimant has sued the Respondent for unlawful dismissal.
2. The Respondent entered appearance on 25th June 2015 but did not file a Reply. Directions were therefore given on 16th June 2016 that the matter proceeds to formal proof. The Claimant testified on his own behalf.

The Claimant's Case

3. The Claimant states that he was employed as a cook in one of the Respondent's fast food outlets known as K-Chick Inn at a monthly salary of Kshs. 8,000 effective April 2011. At the time of leaving employment, the Claimant's salary stood at Kshs. 11,660.
4. The Claimant further states that he was employed on six months' renewable contract and continuously worked for the Respondent until 12th July 2014 when his employment was terminated. His running contract was due to expire on 31st October 2014.
5. The particulars of the termination are that on 12th July 2014, the Claimant was on night shift in the kitchen when the Respondent's Director, Davies Mnene walked into the kitchen, grabbed the serving bowl into which the Claimant was putting potato chips and smashed it with its contents on the floor, alleging that the Claimant had not cleaned the frying pan.
6. The Claimant avers that it was the duty of the day shift cook from whom the Claimant had taken over to clean the frying pan before handing over. The Claimant adds that the day shift cook had confirmed that he had cleaned the frying pan and changed the oil. The Claimant did not notice any dirt in the frying pan to warrant the Director's reaction.
7. Following this incident, the Claimant's employment was terminated on the same day. He states that he

was not paid his terminal dues. He further states that the Respondent did not remit his National Social Security Fund (NSSF) dues.

8. The Claimant's claim is as follows:

- a) Unpaid salaries from July 2014 to October 2014 at the rate of Kshs. 11,660 per month
- b) Terminal benefits calculated from the date of employment being April 2011
- c) Damages for unfair termination
- d) Two months' salary in lieu of notice
- e) Severance pay
- f) Certificate of service
- g) Costs plus interest

Findings and Determination

9. There are two (2) issues for determination in this case:

- a) Whether the termination of the Claimant's employment was lawful and fair;
- b) Whether the Claimant is entitled to the remedies sought.

The Termination

10. The Claimant told the Court that following the incident with the Respondent's Director, Davies Mnene on 12th July 2014, his employment was terminated instantly. There was no evidence that the Respondent provided a reason for the termination as required by Section 43 of the Employment Act, 2007. The termination was therefore substantively unfair.

11. Further, the Claimant was not taken through any disciplinary process as required under Section 41 of the Act rendering the termination procedurally unfair as well.

Remedies

12. In view of the finding that the termination of the Claimant's employment was substantively and procedurally unfair, I award him six

(6) months' salary in compensation. In making this award I have taken into account the Claimant's length of service as well as the Respondent's conduct in the termination. I further award the Claimant one (1) month's salary in lieu of notice.

13. From the NSSF statement produced by the Claimant, the Respondent did not remit the Claimant's NSSF dues as required. I therefore award the Claimant service pay at the rate of 15% of monthly salary for each completed year of service.

14. The Court found no basis for the claim for unpaid salaries from July 2014 to October 2014 which is hereby dismissed

15. Ultimately I enter judgment in favour of the Claimant in the following terms:

- a) 6 months' salary in compensation.....Kshs.69,960

b) 1 month's salary in lieu of notice.....11,660

c) Service pay for 3 completed years of service.....17,490

Total.....99,110

16. This amount will attract interest at court rates from the date of judgment until payment in full.

17. I further direct the Respondent to issue the Claimant with a certificate of service and to pay the costs of this case

18. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 13TH DAY OF JANUARY 2017

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JUDGE

Appearance:

Mr. Owang for the Claimant

No appearance for the Respondent