



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1684 OF 2012

KENNEDY JUMA

OJWANG.....CLAIMANT

VERSUS

AEGIS CONSTRUCTION CO

LTD.....RESPONDENT

JUDGMENT

Introduction

1. The Claimant’s claim brought by a Memorandum of Claim dated 17th September 2012 and filed in Court on 19th September 2012 is for payment of terminal benefits.
2. The Respondent entered appearance but did not file a reply. At the hearing, the Respondent’s Counsel was given the opportunity to cross examine the Claimant.

The Claimant’s Case

3. The Claimant was employed by the Respondent as a driver on 1st November 2010. On 26th May 2012, the Claimant was issued with an unsigned but stamped letter on the Company’s letterhead terminating his employment from the same date 26th May 2012.
4. The Claimant states that he was terminated without notice. Further, the Respondent failed to take into account his outstanding salaries for the months of May and June 2012. He now claims the following:

- a) Salary for the month of May 2012.....Kshs. 20,000
- b) Salary for the month of June 2012.....20,000
- c) One month’s salary in lieu of notice.....20,000
- d) Severance pay.....30,000
- e) Costs plus interest

Findings and Determination

5. The issue for determination in this case is whether the Claimant has proved his case for payment of the

terminal dues claimed. The termination letter dated 26th May 2012 states as follows:

“To: Kennedy Ojwang

From: Management

26th /May/2012

Subject: Redundancy

Dear Sir

Due to breakdown of KAU 931S which will take some time to repair, the management has decided to terminate your services w.e.f 26/5/2012. You will be paid all your dues according to the labour laws

Thank you

AEGIS CONSTRUCTION LTD”

6. From this letter which was not disputed by the Respondent, the termination of the Claimant's employment was on account of redundancy. Section 2 of the Employment Act, 2007 and the corresponding section in the Labour Relations Act, 2007 define redundancy as:

“the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.”

7. Section 40 of the Employment Act, 2007 sets out the following conditions to be observed by an employer terminating employment on account of redundancy:

a) Where the employee is a member of a trade union, the employer notifies the union of which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for and the extent of the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;

b) Where the employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;

c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;

d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;

e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;

f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and

g) the employer has paid an employee declared redundant severance pay at the rate of not less than fifteen days' pay for each completed year of service.

8. There was no evidence that the Claimant was given notice of termination of his employment on account of redundancy or that he was paid severance pay as required by law. The Court therefore finds that the Claimant is entitled to notice pay and severance pay as claimed.

9. Further, by totally ignoring the dictates of Section 40 of the Act, the Respondent placed the termination of the Claimant's employment within the realm of unfairness as defined by Section 45 for which I award the Claimant three (3) months' salary in compensation.

10. There was however no evidence that the Claimant worked beyond the date given in the termination letter being 26th May 2012 and the claim for salary arrears must therefore fail.

11. Ultimately I enter judgment in favour of the Claimant as follows:

a) 3 months' salary in compensation.....Kshs. 60,000

b) 1 month's salary in lieu of notice.....20,000

c) Severance pay for one year of service (20,000/30x15).....10,000

Total.....90,000

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

13. The Claimant will have the costs of this case.

14. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 10TH DAY OF FEBRUARY 2017

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JUDGE

Appearance:

Miss Mpoza for the Claimant

Miss Kanyiri for the Respondent