



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 266 OF 2014

BONIFACE MUTUA MAINGI

CLAIMANT

v

RIFT VALLEY PRODUCTS LIMITED

RESPONDENT

JUDGMENT

1. For determination are the questions, *whether the termination of the employment of Boniface Mutua Maingi (Claimant) by Rift Valley Products Ltd (Respondent) was unfair, whether the Claimant has outstanding pay, whether the Claimant had outstanding leave and appropriate remedies/orders.*
2. The Cause was heard on 26 June 2016 and 13 December 2016 after which the Claimant filed his submissions on 16 January 2017, while the Respondent filed its submissions on 20 January 2017.
3. The Court has considered all the material placed before it.

Whether termination of employment was unfair

4. The Claimant (a machine operator) pleaded and also testified that when he resumed work after Christmas break in 2013, he was informed to stay at home to await the purchase of new machines by the Respondent but he was never called back or re-engaged when he went to inquire on 27 December 2013.
5. He also testified that he was not given notice of termination and therefore the action was unfair.
6. The Respondent denied that the Claimant's employment was unfairly terminated and its supervisor who testified informed the Court that the separation was due to shortage of raw materials. He asserted that the Claimant was not patient.
7. On the basis of the evidence placed before Court, the Court concludes that the separation was not due to any *misconduct, poor performance or physical incapacity* on the part of the Claimant, but was due to operational requirements of the Respondent.
8. It was involuntary separation which falls under category of redundancy and therefore the Respondent should have complied with the conditions outlined in section 40 of the Employment Act, 2007.
9. Because of the non-compliance, the Court returns a verdict of unfair termination of employment on the ground of redundancy.

Outstanding earned wages

10. The Claimant pleaded that he was not paid Kshs 10,530/- as wages for December 2013, but during testimony he did not advert to this question at all and therefore, the Court would consider the basis for this head of claim as not laid.

Outstanding leave

11. The Claimant's testimony that he did not go on leave during the course of employment (May 2003 to December 2013) was not rebutted or challenged and the Respondent did not produce any records, which by law it was obligated to keep.

12. In fact, the Respondent's witness admitted that the Claimant did not go on leave during the employment.

13. The Court would therefore find that the Claimant has laid a basis for the claim for Kshs 124,839/- on account of leave.

Appropriate remedies

Days worked December 2013

14. This head of relief is declined.

Outstanding leave

15. The Court reaches conclusion that the Claimant is entitled to Kshs 124,839/- on account of leave.

Pay in lieu of notice

16. In terms of section 40 of the Employment Act, 2007, the Claimant is entitled to 1 month pay in lieu of notice equivalent to 1 month's basic pay (Kshs 11,700/-).

Severance pay

17. The Claimant computed severance pay as Kshs 58,500/- and because the Court has reached a conclusion of unfair termination of employment on account of redundancy, and by dint of section 40 of the Employment Act, 2007, the Court would award him the same as there was no challenge to the computations.

Compensation

18. In consideration of the award of severance pay, the Court will not award compensation, which is a discretionary remedy.

Conclusion and Orders

19. The Court finds and holds that the Claimant's employment was terminated on account of redundancy without complying with the law and awards him and orders the Respondent to pay him

(a) Outstanding leave	Kshs 124,839/-
(b) Pay in lieu of Notice	Kshs 11,700/-
(c) Severance pay	Kshs 58,500/-

TOTAL Kshs 195,039/-

