



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 166 OF 2014

(Formerly Nairobi HCCC 1460 of 2005)

BENEDICT ESIROMO EMACAR.....CLAIMANT

VERSUS

KENYA POSTEL DIRECTORIES LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. This matter was initially filed in the High Court as HCCC No. 1460 of 2005. It was transferred to this Court by an order issued by **Ougo J** on 22nd November 2013. A Memorandum of Claim was filed on 5th August 2014. The Respondent relied on its Defence filed in the High Court on 17th January 2006.

2. When the matter came up for hearing, the Claimant testified on his own behalf and the Respondent called its Finance Manager, Pamela Wanjiru Chege.

The Claimant’s Case

3. The Claimant was employed by the Respondent on 16th November 1994 in the position of Credit Controller. He worked as such until 14th November 2005 when his employment was terminated.

4. The Claimant denies the allegations of insubordination leveled against him which arose from a customer complaint of a wrong directory entry. The Claimant states that the termination of his employment was unlawful and unfair.

5. The Claimant’s claim is as follows:

- a. Balance of two (2) months’ salary in lieu of notice....Kshs. 196,200
- b. 12 months’ salary in compensation.....1,177,200
- c. Service pay for 11 years.....1,079,100
- d. Allowances due for November 2005.....21,750
- e. Damages for loss of employment and earnings up to 60 years

f. Certificate of service

The Respondent's Case

6. In its Defence dated 17th January 2006 and filed in Court on even date the Respondent admits that the Claimant was its employee from 1st June 1994 up to 14th November 2005

7. The Respondent states that the Claimant was lawfully terminated as a result of the Claimant's breach of the employment contract. Upon termination the Claimant was paid all his terminal dues.

Findings and Determination

8. 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

9. The Claimant's employment was terminated by letter dated 14th November 2005 stating as follows:

"Dear Mr. Emacar,

RE: TERMINATION OF SERVICES

This has reference to various correspondences relating to the issue of Techpak Industries Ltd. Management has reviewed this matter and it has noted with concern that you overruled a management decision without due regard to protocol or necessary consultation.

We regret to inform you that management has lost confidence and trust in you and accordingly your services are hereby terminated with immediate effect. You will be paid salary up to 14th November, 2005 in addition to one (1) month's salary in lieu of notice, and any other benefits that may be outlined in your contract of employment, subject to normal clearance procedures.

Your final dues will be as follows:

<i>(a) One month's salary in lieu of notice</i>	<i>Ksh. 80,100.00</i>
<i>(b) Salary up to 14th November, 2005</i>	<i>Ksh. 40,500.00</i>
<i>(c) Pro-rata leave (11 days) accrual up to 14/11/05</i>	<i>Ksh. 41,960.00</i>
<i>(d) Car allowance up to 14th November 2005</i>	<i><u>Ksh. 9,000.00</u></i>
	<i>Total Ksh.171,560.00</i>
<i>(e) LESS PAYE</i>	<i><u>45,399.00</u></i>
	<i>Total due <u>Ksh.126,161.00</u></i>

Please ensure that you comprehensively hand in to your immediate supervisor all items that may be under your charge by virtue of your employment before any payments due to you may be effected.

Yours sincerely,

James Waweru

HUMAN RESOURCES MANAGER”

10. A reading of the Claimant’s pleadings and submissions indicates that the Claimant’s claim is premised on provisions of the Employment Act, 2007.

However when the cause of action arose, this law had not come into effect. The applicable law was the repealed Employment Act (Cap 226) under which an employment contract could be terminated by either party by notice or pay in lieu thereof. According to the evidence on record, the Claimant was paid one month’s salary in lieu of notice as provided under his employment contract. He was also paid salary up to the date of termination. The Court therefore finds no basis for the Claimant’s claim which is dismissed in its entirety.

11. Each party will bear their own costs.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 31ST DAY OF MAY 2017

LINNET NDOLO

JUDGE

Appearance:

Mr. Ngani for the Claimant

Mr. Ohenga for the Respondent