



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1140 OF 2014

ISAAC NYAMAI LAVI..... CLAIMANT

VERSUS

THOLAS GLASS ENTERPRISE LTD..... RESPONDENT

Claimant in person

Mr. Malabu for Respondent

JUDGMENT

1. The Claimant was employed as a machine operator by the Respondent on 23rd October 2010 at a basic monthly salary of Kshs.30,800/=.
2. The Claimant worked continuously until the 8th January 2013, when the Respondent terminated his employment for reporting a day late after the Christmas Holidays.
3. The Claimant had a good record and worked diligently and according to RWI the witness for the Respondent, the Claimant should have received a first warning for the offence.
4. The Claimant and RWI conceded that the Claimant had sent an e-mail message to the Managing Director explaining that he was unable to get transport from home to Nairobi and would be late to report work by a day. However when the Claimant reported to work, he was confronted by a supervisor on the matter and was sent home without a notice to show cause, or an opportunity to explain himself before a disciplinary panel.
5. The counsel for the Respondent insinuated under cross examination that the Claimant was rude when he was asked about his absence, however, this was not supported by RW1, the witness for the Respondent. The Claimant denied that he was rude stating that he had a very good relationship with all staff, a contention which was supported by RW1 for the respondent.
6. The court is satisfied that the employment of the Claimant was terminated for no valid reason and without following a fair procedure. The termination therefore violated **section 43** as read with **section 45** of the Employment Act, and is wrongful and unfair. The Claimant is entitled to compensation in terms of **section 49** of the Act.
7. The Claimant served the Respondent for more than two years. He did not contribute to the termination.

Was sent home without notice and without payment of terminal benefits. He still wished to continue working and has suffered loss and damage.

8. The court awards the Claimant equivalent of three (3) months salary, compensation for the unlawful and unfair termination of employment in the sum of **Kshs.92,400/=**.

Terminal benefits

i. Notice Pay

The Claimant was not paid in lieu of one month notice and he earned Kshs.30,800/= at the time of termination. Court awards him **Kshs.30,800/=** in lieu of notice.

ii. Leave Pay

The Claimant was not paid in lieu of 12 days leave in the year 2011/2012 and the court awards him **Kshs.15,400/=** in lieu of leave.

iii. Agreed Compensation

The parties agreed on payment of Kshs. 200,000 for the arrear payments in terms of the CBA and a handwritten clause was put in the letter of appointment by the Respondent and duly signed to this effect. The Respondent had part paid Kshs.40,000/= pursuant to the agreement and the court awards the Claimant the balance of **Kshs.160,000/=**

iv. Overtime

The Claimant also proved on a balance of probability that he worked overtime of 109 hours, during Saturdays between September 2010 and December 2012 and was not paid overtime in the sum of Ksh. 61,000/=. The court awards the Claim accordingly.

v. Service Pay

The Claimant was registered with NSSF and same was remitted. He is not entitled to payment of service gratuity as claimed.

vi. The Respondent is to provide the Claimant with Certificate of service within 30 days of this judgment.

9. In the final analysis this court awards the Claimant as follows:

I. Kshs. 92,400/= compensation.

I. Kshs.30,800/= for Notice Pay.

III. Kshs. 15,400/= leave pay.

IV. Kshs. 160,000/= Agreed Compensation in terms of CBA.

V. Kshs. 61, 000/= overtime.

Total award **Kshs.359,200/=**.

VI. Interest at court rates from date of filing suit till payment in full in respect of all items except the equivalent of three (3) months' salary, compensation for unlawful termination in respect of which interest to accrue from date of judgment.

VII. Costs to follow the outcome.

VIII. Respondent to provide the Claimant with certificate of service within 30 days of judgment.

Dated and Delivered at Nairobi this 17th day of May 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE