



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO.154 OF 2014

PAUL NG'ANG'A WAMUHU..... CLAIMANT

VERSUS

MAATHAI SUPERMAKET LIMITED..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 19th May, 2017)

JUDGMENT

The claimant filed the memorandum of claim on 24.11.2014 through Kairu Mbutia & Kiingati Advocates. On 03.05.2016 the claimant filed a notice of change of advocates to Nderi & Kiingati Advocates. The claimant prayed for judgment against the respondent for:

- a) A declaration that his termination from employment was unfair and unlawful.
- b) The respondent to pay the claimant Kshs.300,000.00 being 12 months' salary for compensation for unfair termination; Kshs.25,000.00 pay in lieu of termination notice; and Kshs.5, 769.00 pay for 6 days worked in July.
- c) An order the respondent to issue the claimant with a certificate of service.
- d) Costs of the suit.
- e) Any other relief the honourable court may deem just and mete to grant to meet the ends of justice.

The memorandum of response was filed for the respondent on 26.02.2015 through Mwihia & Mutai Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs. On 22.06.2015 the respondent filed a notice of change of advocates to Wahome Gikonyo & Company Advocates.

The material on record show that the parties were in a contract of employment. The date the employment commenced has not been pleaded but the claimant testified that he was employed from sometimes in November 2013. The employment was terminated by the letter dated 06.07.2014 on account of unsatisfactory performance. The letter of 07.08.2014 by one David Kihara, the respondent's Human Resource Manager, stated that the claimant was employed from November 2013. The court returns that the employment contract was from November 2013 to 06.07.2014.

The only issue for determination is whether the claimant is entitled to the remedies as prayed for. The court makes the findings as follows:

a) The claimant's evidence was that on 06.07.2014 he resumed duty after an off and was handed the letter of termination dated 06.07.2014. Prior to that he received no termination notice and it was his evidence that he was not given a hearing as envisaged in section 41 of the Employment Act, 2007. The evidence by the respondent's witness (RW) one Michael Sila Nyamai was that the claimant was given a warning letter of 17.06.2014 questioning his poor performance because as a supervisor, the staff working under him was allegedly underperforming. Having failed to improve, RW testified that the claimant's employment was terminated by the letter dated 06.07.2014. The court finds that prior to the termination the respondent failed to comply with the requirement for notice and a hearing per section 41 of the Act and the court returns that the termination was unfair. The court has considered the short period the claimant served the respondent being about 8 months. The court has considered the respondent's concerns that the claimant's work was not satisfactory. In view of those factors, the court awards the claimant 3 months' salaries for unfair termination at his last gross pay of Kshs.25,000.00 making **Kshs. 75,000.00** under section 49(1) (c) of the Act and as submitted for the respondent.

b) The claimant's employment was terminated on 06.07.2014 and the court returns that he is entitled to **Kshs.5, 769.00** for the 6 days and as prayed for.

c) The claimant was not served a notice of termination of employment and is awarded **Kshs. 25,000.00** being pay in lieu of the notice and as prayed for.

d) As a matter of statutory provision, the claimant is entitled to the certificate of service.

In conclusion, judgment is hereby entered for the claimant against the respondent for:

a) The declaration that the termination of the contract of employment herein was unfair and unlawful.

b) The respondent to pay the claimant **Kshs.105, 769.00** by 01.07.2017 failing interest to be payable thereon at court rates from the date of the suit 24.11.2014 till full payment.

c) The respondent to deliver to the claimant the certificate of service by 01.07.2017 and issued as prescribed in the Employment Act, 2007.

d) The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at Nyeri this **Friday, 19th May, 2017.**

BYRAM ONGAYA

JUDGE