



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

CAUSE NO. 1916 OF 2011

ROBERT KIPKEMBOI KIRWA.....1ST CLAIMANT

PARTICK ISAAC INJENDI.....2ND CLAIMANT

VERSUS

BIDCO OIL REFINERIES LIMITED.....RESPONDENT

Mr. Namada for claimants

JUDGMENT

1. The suit was commenced vide a memorandum of claim on 15th November 2011 seeking maximum compensation for unlawful constructive summary dismissal of the claimants by the respondent.
2. The particulars of claim are set out in the memorandum of claim as follows;
3. The 1st and 2nd claimants worked for respondent as general workers from December 2005 and August 2007 respectively each earning a monthly salary of Kshs.12,760/=.
4. That in July 2011, the supervisor did not assign the claimants any work. The claimants sought to know why but the supervisor declined to listen to them. The two reported to the Head of packing department.
5. The two found a report by the supervisor to the effect, they had incited other employees not to work and to go on strike. The claimants denied these allegations.
6. The Head of department and Head of human resource department declined to listen to the claimants and the two were chased out of the respondent's premises and their employment cards were confiscated.
7. The claimants state that the conduct by the respondent amounted to constructive summary dismissal unlawfully and unfairly and each claim as follows;

1st Claimant

- (a) Kshs.12,760/= in lieu of one month's salary.
- (b) Service gratuity for 5 years calculated as follows;

(x 12,760 x 5) = Kshs.38,280/=

(c) Payment in lieu of leave days not taken for 5 years Kshs.63,800/=

(d) Compensation

2nd Claimant

(a) Kshs.12,760/= in lieu of one month's salary.

(b) Service gratuity for 4 years calculated as follows;

(x 12,760 x 4) = Kshs.30,624/=

(c) Payment in lieu of leave days not taken for 4 years Kshs.51,040/=

(d) Compensation

8. The claimants served demand notice but the respondent did not heed the same.

9. The claimants pray that the suit be allowed with interest from date of filing suit till payment in full and costs.

10. The respondent did not file a response to the memorandum of claim and did not attend court in spite of service of the statement of claim and summons on them.

11. Musinga and Company Advocates filed a notice of appointment dated 2nd February 2012 and did not take any further action. Notices were served on Musinga and Company Advocates on 6th November 2012, on 7th August 2013, on 2nd January 2014, on 30th January 2014, on 16th December 2014 and 22nd July 2015 on which dates, the firm acknowledged receipt of various notices but did not attend court.

12. The matter was set down for formal proof on 17th January 2017 and it duly proceeded undefended.

13. The claimants have proved the particulars of claim on a balance of probability and the court finds the respondent liable to pay the terminal benefits set out in the memorandum of claim and in this judgment and awards the claimants accordingly.

14. With regard to compensation, the court finds that the summary dismissal of the claimants unlawfully and unfairly has been proved on a balance of probability in that they were dismissed without notice, without a valid reason and without being given opportunity to explain or defend themselves.

15. The claimants had served the respondents for 5 years and 4 years respectively and had no adverse record. They wished to continue working but were denied the opportunity. We're not paid any terminal benefits upon termination and they suffered loss and damage and the court awards each one of them five (5) months' and four (4) months' salary respectively as compensation in terms of Section 49 of the Employment Act, in the sum of Kshs.63,800/= and Kshs.51,040/= respectively.

16. The court enters judgment in favour of;

(a) 1st claimant in the sum of Kshs.178,640/=

(b) 2nd claimant in the sum of Kshs.145,464/=

(c) Interest at court rates from date of judgment till payment in full.

(d) Costs to follow the outcome.

Dated and delivered at Nairobi this 5th day of May 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE