



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 138 OF 2015
JOHN GITHUMBI MUNGE.....CLAIMANT
VERSUS
ALFAJIRI COMPANY LIMITED.....RESPONDENT

Kamotho Njomo for claimant

JUDGMENT

1. The suit was commenced vide memorandum of claim on 5th February 2015.
2. The claimant seeks compensation for unlawful and unfair dismissal and payment of terminal benefits to wit;
 - a. 3 months' arrears salary Kshs.48,000/=.
 - b. Payment in lieu of leave days not taken Kshs.16,000/=.
 - c. Payment for holidays worked Kshs.9,000/=.
 - d. One month's salary in lieu of notice Kshs.16,000/=
 - e. Overtime
 - f. Housing
 - g. Service pay
 - h. Aggravated damages
 - i. Interests and costs

Facts of the Case

3. The claimant was employed by the respondent as a barman on 1st August 2012 at a monthly salary of Kshs.16,000/=. The claimant was paid fortnightly through a bank account.

4. The claimant was not paid salary for the months of May, June and July 2014.
5. On 15th July 2014, the respondent instructed the claimant to go on leave for 26 days. The claimant reported back in August 2014 but was told to go back home and await to be recalled. The respondent ignored the claimant's plea to be paid arrear salary. The Managing Director refused to meet the claimant to discuss the matter.
6. On 31st October 2014, the claimant wrote a demand letter to the respondent regarding his employment. This was not responded to hence the filing of this suit.
7. The termination of the employment of the claimant was unlawful since no reason was given for the termination and he was not subjected to any disciplinary procedure.
8. At the time of termination, the claimant was owed 26 leave days and claims payment in lieu thereof. He had worked continuously without leave.
9. The claimant also worked from 11 a.m. up to 3. a.m. every day and was not paid overtime. He also worked during public holidays and was not paid twice and claims Khs.9,600/= in respect of the holidays worked.
10. The claimant was registered with NSSF and NHIF and the respondent used to remit the dues per attached statements.
11. The claimant was not given a certificate of service making it difficult for him to get alternative employment.
12. The claimant seeks payment of housing allowance calculated at 15% of the basic salary.
13. In addition the claimant seeks 12 months' compensation for the unlawful termination of employment.

Determination

14. The claimant gave oral testimony under oath in support of the particulars of claim. The respondent did not file statement of response to the claim even though the respondent was served with the memorandum of claim and summons by a qualified process server Mr. Charles Mutua Mwanzi on 26th July 2014. Affidavit of service was filed on 9th April 2015.
15. The claim by the claimant remains undefended and the court finds the following claims to have been proved on a balance of probability and awards the claimant accordingly;
 - a. Three months' salary for the months of May, June and July 2013 in the sum of Kshs.48,000/=.
 - b. 26 days unpaid leave in the sum of Kshs.16,000/=
 - c. Two days' double payment for worked holiday in the sum of Kshs.9,600/=.
 - d. One month salary in lieu of notice in the sum of Kshs.16,000/=.
16. The claim for overtime, housing and service pay were not sufficiently proved and are dismissed.

Compensation

17. The claimant has proved on a balance of probability that the termination violated Section 45 of the Employment Act, and is entitled to compensation in terms of Section 49 of the Act.

18. Compensation is provided by Section 49 (1) (c) as read with 49 (4). In this regard the court considers the following factors in assessing compensation;

19. The claimant had served the respondent for about two years. He intended to continue working for the respondent and lost career prospects for many years. The claimant did not get any terminal benefits upon termination. He was not paid salary for work done for three months.

20. The claimant did not get certificate of service to help him get alternative employment. The claimant suffered loss and damage and the court awards him five (5) months' salary being compensation for unlawful loss of employment in the sum of Kshs.80,000/=.

21. Total award to the claimant is **Kshs.169,600/=**. The award is payable with interests at court rates from date of judgment till payment in full.

22. The respondent to provide certificate of service to the claimant within 14 days of this judgment.

23. The respondent to pay costs of the suit.

Dated and Delivered at Nairobi this 30th day of June 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE