



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT MOMBASA
CAUSE NUMBER 569 OF 2014

BETWEEN

GEORGE OKONO CLAIMANT

VERSUS

LITTLE CHEF HOLDINGS LIMITED RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

D.N. Omari & Company Advocates for the Claimant

No appearance for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim, on the 7th November 2014. He states he was employed by the Respondent in the position of Supervisor, in the year 2006. He was to be paid a salary of Kshs. 15,000 per month. The Respondent summarily dismissed the Claimant in September 2013, alleging the Claimant was not performing his duties well, and had become a liability. The Claimant attached a job card to his Statement of Claim, showing he worked as Unit Manager for the Respondent. He similarly attached an Internal Memo dated 21st March 2011 from Managing Director Julius Kamau to him, where the issue of performance was raised. Termination was without notice and/or just cause. The Respondent failed to pay Claimant's salary from August 2013, to the date of termination. He claims:-

- a. Arrears of salary from August 2013 [to-date?] at Kshs. 270,000.
- b. 2 months' salary in lieu of notice at Kshs. 36,000.
- c. House allowance at Kshs. 226,800.
- d. Public Holidays' Pay at Kshs. 100,800.
- e. Compensation the equivalent of 12 months' salary at Kshs. 216,000

Total Kshs. 849,600

f. Interest.

g. Costs.

2. There is an Affidavit of Service on record showing the Respondent was served with the Notice of Summons and the Statement of Claim. There is nothing filed on the part of the Respondent. The Respondent did not attend Court at any time. The Claimant applied before the Court, and was allowed to have the Claim considered and determined on the strength of the record. He confirmed the filing of his Closing Submissions on the 1st November 2016.

The Court Finds:-

3. The Claim is undefended. The Court is satisfied on the strength of the material before it, that the Claimant was employed by the Respondent as a Unit Manager. His contract was terminated by the Respondent in September 2013, without notice and /or just cause.

4. His last salary was Kshs. 18,000 per month.

5. He was not paid his salary for the month of August and September 2013.

6. His salary for 2 months however, cannot amount to the figure of Kshs. 270,000 pleaded as arrears of salary. ***The Claimant is granted arrears of salary of 2 months, at Kshs. 36,000.***

7. There is no contractual clause, or legal provision, allowing either Party 2 months' salary in lieu of notice. The Claimant did not explain to the Court on what ground, his prayer for 2 months' salary as notice pay, stands. ***He is allowed 1 month salary in lieu of notice at Kshs. 18,000, under Section 36 of the Employment Act 2007.***

8. The Respondent, as stated above did not challenge Claimant's Pleadings in any way. There is nothing to contradict the Claimant's position that Kshs. 18,000 paid to him, was basic salary. The law allows him to have house rent allowance at a minimum of 15% of his basic salary. ***The Court does not see any impediment in allowing the prayer for arrears of house rent allowance at Kshs. 226,800 for the period in employment.***

9. ***Similar rationale applies in the prayer for Public Holidays' Pay. The item is allowed as prayed at Kshs. 100,800.***

10. The Respondent did not justify termination as required under Section 43, 45 and 47 of the Employment Act 2007. The Claimant has demonstrated he was employed by the Respondent, and that the Respondent terminated his contract unfairly. He discharged his evidential obligation under Section 47 of the Employment Act.

11. He is entitled to compensation for unfair termination. ***He is granted the equivalent of 7 months' gross salary, based on the consolidated monthly salary of Kshs. 20, 700, at Kshs. 144,900, in compensation for unfair termination.***

12. Costs to the Claimant.

13. Interest granted at 14% per annum from the date of Judgment, till payment in full.

IN SUM, IT IS ORDERED:-

a. Termination was unfair.

b. The Respondent shall pay to the Claimant: arrears of salary at Kshs. 36,000; notice pay at Kshs. 18,000; arrears of house rent allowance at Kshs. 226,800; and the equivalent of 7 months' gross salary

in compensation for unfair termination at Kshs. 144, 900 – total Kshs. 425,700.

c. Costs to the Claimant.

d. Interest allowed at 14% per annum from the date of Judgment till payment in full.

Dated and delivered at Mombasa this 16th day of June 2017

James Rika

Judge