



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 179 OF 2016

JONATHAN MULEWA MKARECLAIMANT

VERSUS

HABO GROUP OF COMPANIESRESPONDENT

J U D G M E N T

INTRODUCTION

1. The claimant was employed by the respondent on 20/12/2013 as a Chef earning ksh50000 per month. From 1/1/2015 he proceeded on leave until 2/2/2015. When he reported back on the said date, he was served with a letter dated 20/12/2014 purporting to terminate his employment on account of redundancy. The termination was effective 1/1/2015, the date he went on leave. The claimant was aggrieved because the termination was not proceeded by a proper and formal notice. He has brought this suit claiming compensation for the unfair termination of his employment contract in addition to the terminal benefits.

2. The respondent never entered appearance and never filed any defence to deny the claimant's claim. Consequently the suit proceeded ex parte by way of written submissions on the strength of the claim record.

ANALYSIS AND DETERMINATION

3. Upon perusal and careful consideration of the uncontested evidence and submissions presented by the claimant, it is clear that the claimant was employed by the respondent as a Chef from 20/12/2013 until 1/1/2015 when he was terminated on account of redundancy. The issues for determination are:

- (a) Whether the termination of the employment contract was unfair.
- (b) Whether the claimant is entitled to the reliefs sought.

Unfair termination

4. The procedure for termination of employment contract on account of redundancy is provided in mandatory terms under Section 40 of the Employment Act. The said provision requires that before terminating the contract, the employer is required to first serve at least one month notice in writing to the employee or his union and he labour officer in his locality. Thereafter the employer is required to undertake a fair selection process to identify the staff to be laid off. Finally the employer is required to pay to the selected employee salary in lieu of notice, all accrued benefits plus severance pay.

5. In this case, the respondent never served the mandatory one month notice in writing to the claimant and the labour officer. That default rendered the termination on account of redundancy procedurally unfair under Section 45(2) (c) of the Act read with Section 40 of the Act. The said unfairness could not be cured by the offer to pay the terminal benefits calculated by the respondent. Consequently, I find and hold that the claimant has discharged his burden of proving unfair termination as required under Section 47(5) of the Act.

Reliefs

6. Under Section 49 of the Act, I award the claimant ksh.300,000 being six months salary as compensation for the unfair termination. In awarding the said compensation, I have considered the fact that the claimant did not contribute to the termination through misconduct. I have also considered the fact that he worked for only one year before the unfair termination and the employer offered to pay him severance pay.

7. In addition to the foregoing compensation, I award the claimant the same terminal benefits calculated by the respondent after the termination. The dues included:

(a) One month salary in lieu of notice	50000
(b) Leave of 15 days	25000
(c) Sacco deductions	2400
(d) Unpaid salary (march 2014).....	.50000
(c) Severance pay (one year).....	25000
(d) In-house savings	<u>7200</u>
	<u>159600</u>

DISPOSITION

8. For the reason that the claimant was laid off without following the statutory procedure, I enter judgment for him declaring the termination unfair and awarding him ksh.459,600 plus costs and interest. The said sum shall be subject to statutory deductions. He will also have certificate of service.

Dated, signed and delivered this 9th June 2017

O.N. Makau

Judge