



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

CAUSE NO. 479 OF 2014

LUTATWA NJONJO.....CLAIMANT

v

ELDORET MATTRESS LIMITED.....1ST RESPONDENT

DANIEL NGUGI t/a KAMTINGA SERVICES LIMITED...2ND RESPONDENT

JUDGMENT

1. This judgment was meant to be delivered in Nakuru on 31 July 2017. But because all the litigants and advocates on record are based in Eldoret, Mr. Rugut for the Claimant and Mr. Aseso for the Respondent requested that it be delivered in Eldoret, where the Court has now opened a sub-registry. The Court allowed the request.

2. Lutatwa Njonjo (Claimant) sued Eldoret Mattress Ltd (1st Respondent) and Daniel Ngugi t/a Kamtinga Services Ltd (2nd Respondent) on 2 October 2014 alleging unlawful termination of employment.

3. The heads of claim related to *pay in lieu of notice, service benefits, overtime dues and compensation for unfair termination of employment.*

4. Together with the Memorandum of Claim, the Claimant filed a brief witness statement in the following terms

I am the above mentioned adult of sound mind bearer of National Identity card number [particulars withheld].

I was employed by the Respondent on 15/5/2011 and I rendered my services to it with full devotion.

That it was on 1/7/2014 when my services were unprocedurally terminated.

I now claim as per the memorandum filed herewith together with costs and interest.

5. The Respondents filed a Joint Reply to the Memorandum of Claim on 8 December 2014 where they denied all the averments by the Claimant.

6. The Respondents also asserted that the Claimant's position was declared redundant after due notice and

payment of dues. An *acknowledgment of payment of dues* by the Claimant and a *Certificate of Service* were attached to the Reply.

7. The Claimant did not file any rejoinder to the Reply to the Memorandum of Claim.

8. When the Cause was called out for hearing on 30 March 2017, the parties' advocates informed the Court that they had agreed that the Cause be determined on the basis of the record and written submissions to be filed.

9. The Court agreed to the proposal by the parties and gave directions as to the filing of submissions and in this respect the Claimant filed his submissions on 24 April 2017, while the Respondents submissions were filed on 9 June 2017 (outside the agreed timelines).

10. The Court has considered the material on record and come to the conclusion that the Memorandum of Claim herein ought to be dismissed for the following reasons.

11. One, the Claimant did not make a rejoinder to the Respondents contention that this was a case of redundancy and that due notice and dues were paid. An acknowledgment of receipt of dues had been filed in Court.

12. Two, the Claimant's written witness statement was extremely bare and devoid of why the termination of employment was unfair. The Claimant was content with alleging that

That it was on 1/7/2014 when my services were unprocedurally terminated.

13. That statement alone and taken in isolation was not sufficient to satisfy the burden placed on an employee alleging unfair termination of employment by dint section 47(5) of the Employment Act, 2007.

14. Three, the pleadings presented disputed facts which could only be resolved through an oral hearing and interrogation of the facts/evidence. The parties opted out of that normal route for reasons best known to themselves.

15. Lastly, some of the heads of claim such as *overtime* required evidence as to the agreed or actual working hours and the prescribed (statutory) minimum hours beyond which overtime was payable. There was even nothing on record to prove how much the Claimant was earning per month.

16. The Court orders that the Memorandum of Claim herein be dismissed with costs to the Respondents.

17. It is so ordered.

Delivered and signed in Eldoret on this 28th day of July 2017.

Radido Stephen

Judge

Appearances

For Claimant Mr. Morande instructed by Chepkwony & Co. Advocates

For Respondents Ms. Kuyaiki instructed by Gicheru & Co. Advocates

Court Assistant Nixon