



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1111 OF 2013
ALBERT MAINA GAKAYA.....CLAIMANT
VERSUS
PANARI HOTEL LIMITED.....RESPONDENT

Mr. Muriuki for claimant

Mr. Mbugua Mureithi for respondent

JUDGMENT

1. The claimant by a statement of claim filed on 17th July 2013 seeks compensation for wrongful termination and payment of terminal benefits to wit;
 - a. Arrear salary for March 2013 in the sum of Kshs.61,466/=.
 - b. Three (3) months in lieu of notice in the sum of Kshs.184,398/=.
 - c. Payment for lost earnings for 20 years in the sum of Kshs.14,751,840/=.
 - d. Interest and costs.
2. The statement of claim and summons were duly served and Mbugua Mureithi and Company Advocates entered appearance for the respondent on 6th February 2014.
3. The respondents did not file a statement of defence.
4. On 21st February 2017, the respondent was allowed seven (7) days to file statement of defence by the court failing which the matter would proceed to formal proof on 22nd June 2017.
5. On 22nd June 2017, the respondent or its counsel did not appear in court and matter proceed to formal proof.
6. The claimant testified under oath and he told the court that he was employed by the respondent in August 2009 and worked continuously as an IT specialist until 11th July 2013.

7. The claimant relied on a witness statement filed on 7th July 2013 in which he states that he was unlawfully dismissed from employment without notice and with no reason given.
8. That he suffered loss and damage as a result of the dismissal. That he is entitled to payment in lieu of notice and salary for the month of March 2013.
9. That he would have served the respondent for twenty more years and that prospect was lost.
10. That he earned a monthly salary of Kshs.61,466/=.

Determination

11. The claim is not opposed, however, the claimant has the onus of proving his claim on a balance of probability.
 12. In this regard, the claimant has shown that he had worked for 11 days in the month of March 2013, until he was dismissed on 11th March 2013. The claimant is therefore entitled to 11 days' salary for the month of March in the sum of Kshs.22,537/=.
 13. The claimant has also established that he was dismissed from employment without notice and is entitled to a statutory notice of one month salary in lieu in terms of the Employment Act, 2007. No basis has been established for the claim of three months' notice. The court awards the claimant Kshs.61,466/= in lieu of one month notice.
 14. With regard to compensation in terms of Section 43 as read with Section 47 (5) of the Employment Act, 2007, once the claimant alleges that he was unlawfully dismissed from employment, the respondent has the onus to justify the dismissal by showing on a balance of probability that the dismissal was for a valid reason and that the employer complied with Section 41 of the Act, in following a fair procedure to effect the dismissal. The respondent has failed to discharge this onus, it being in default of filing a defence.
 15. Accordingly, the dismissal from employment of the claimant was unlawful and unfair contrary to Section 45 of the Employment Act. The claimant is entitled to compensation in terms of Section 49 (1) (c) of the Act, as read with Section 49 (4).
 16. In this respect, the claimant had served for over three years. He wished to continue serving the respondent but lost good career advancement prospects. The claimant has not demonstrated that he would be unable to get a replacement job, being a young IT specialist. However, he suffered loss and damage as a result of the unexpected dismissal without notice and without payment of any terminal benefits.
 17. The court awards the claimant the equivalent of four (4) months' salary as compensation for the wrongful and unfair dismissal in the sum of Kshs.245,864/=. This award takes care of the claim for 20 years lost earnings, which is dismissed for want of proof.
 18. In the final analysis judgment is entered in favour of the claimant as against the respondent as follow;
 - (a) Kshs.61,466/= in lieu of one month's notice.
 - (b) 11 days' salary for March 2013, Kshs.22,537/=
 - (c) Equivalent of four (4) months' salary being compensation in the sum of Kshs.245,864/=.
- Total award Kshs.329,867/=**
- (d) Interest on the amount at court rates from date of judgment till payment in full.

(e) Cost to follow the outcome.

Dated and delivered at Nairobi this 28th Day of July 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE