



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 317 OF 2015

BETWEEN

MICHAEL MATHEKA KIMATU..... CLAIMANT

VERSUS

MALIN TURES LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Jackson Muchiri & Associates Advocates for the Claimant

No appearance for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 14th May 2015. He states he was employed by the Respondent as a Loader, on 7th September 2011. His 1st salary was Kshs. 15,000 per month.
2. He was advanced a sum of Kshs. 6,000 in the month of June 2014. He expected to receive Kshs. 9,000 at the end of the month of June 2014. The Manager advised him, and insisted that, the Claimant had been advanced the sum of Kshs. 11,000, and was only entitled to Kshs. 4,000. The disagreement persisted, and the Respondent therefore, terminated the Claimant's contract verbally, on 4th July 2014.
3. The Claimant feels termination was unfair, and seeks Judgment against the Respondent for:-
 - a) Equivalent of 12 months' salary in compensation for unfair termination at Kshs. 180,000.
 - b) Annual leave pay for a period of 4 years at Kshs. 60,000.
 - c) 1 month salary in lieu of notice at Kshs. 15,000.
 - d) N.S.S.F and N.H.I.F unremitted deductions amounting to Kshs. 34,560.

e) Severance pay at Kshs. 60,000.

f) Costs and interest.

4. There are Affidavits of Service filed by a Process-Server, indicating the Respondent was served with Notice of Summons, Statement of Claim, Mention Notices and Hearing Notice. The Respondent filed nothing in reply, and did not attend Court on any occasion. The Claimant testified, and closed his case, on 12th June 2017. He adopted his Pleadings, Documents and Witness Statement on record.

The Court Finds:-

5. The Pleadings, Documents, Witness Statement and Oral Evidence of the Claimant, are unchallenged.

6. He has shown the Court he was employed by the Respondent as a Loader, earning as of the date he left employment, Kshs. 15,000 per month.

7. He was summarily dismissed by the Respondent on 4th July 2014, after he asked to be paid his correct monthly salary of Kshs. 6000 for the month of June 2014. The Respondent insisted the Claimant had been advanced a sum of Kshs. 11,000, and only Kshs. 4,000 was due. The Claimant acknowledged an advance of Kshs. 9,000, and expected to be paid Kshs. 6,000.

8. Sadly and unfairly, the Claimant was summarily dismissed because of a difference of Kshs. 2000, between what he demanded and what his Employer offered.

9. Termination was without notice and valid reason.

10. ***The Claimant is granted compensation the equivalent of 8½ months' salary at Kshs. 127,500.***

11. He prays for annual leave pay over a period of 4 years, at Kshs. 60,000. He did not show that he was entitled to 30 days of paid leave for each year.

12. ***The Court grants him the minimum of 21 days per year under the Employment Act 2007, computed at Kshs. 48,461 as annual leave pay.***

13. ***He is granted Kshs. 15,000 as notice pay of 1 month.***

14. Statutory deductions made from the Claimant's salary by law should have been remitted to the respective Bodies, to the benefit of the Claimant. The Claimant should pursue compliance against the Respondent with the respective Bodies, under the laws governing those Bodies, rather than seek to have statutory obligations revert to his own pocket. The claim for refund of statutory payment is rejected.

15. There is no support for the prayer for severance pay. The item is rejected.

16. Costs and interest granted to the Claimant.

IN SUM, IT IS ORDERED:-

a) Termination was unfair

b) The Respondent shall pay to the Claimant the equivalent of 8½ months' salary in compensation for unfair termination at Kshs. 127,500; annual leave pay at Kshs. 48,461; and notice pay at Kshs. 15,000 – total Kshs. 190,961.

c) Costs to the Claimant.

d) Interest granted at 14% per annum from the date of Judgment, till payment is made in full.

Dated and delivered at Mombasa this 24th day of July 2017.

James Rika

Judge