



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI
CAUSE NO.1384 OF 2010

JACOB MUMUA KHAZENZI.....1ST CLAIMANT
PHENRICK MAHASI MUGATSIA..... 2ND CLAIMANT
VICTOR MWALE ISINDU3RD CLAIMANT
PATRICK LEDENYO LUSISI4TH CLAIMANT
OMIGA BRIAN MUGULA 5TH CLAIMANT

VERSUS

CHICKTOS LIMITED FAST

FOODS PARKLANDS.....1ST RESPONDENT
JITESH RAITHATHA.....2ND RESPONDENT

JUDGEMENT

The claim was filed on 8th November, 2010. The respondents were served and failed to enter appearance. Hearing notices have been served and there is no defence or attendance. The claimants were thus heard on their evidence in the absence of the respondents.

The claimants were employed by the respondent in various dates between 2007 to 2000 and worked until 18th July, 2010 when the respondent dismissed them without notice as required by law. The claimants were not paid terminal dues and each has set out his claim.

1ST CLAIMANT

He was employed on 29th March, 2008 and dismissed on 18th July, 2010. Monthly wage was Kshs.10,000.00.

Claims

- (a) Notice pay Kshs.10,000.00
- (b) Leave for 3 years Kshs.30,000.00;

- (c) Service for 3 years Kshs.15,000.00;
- (d) Compensation Kshs.120,000.00;
- (e) Salary for July, 2010 Kshs.10,000.00; and
- (f) Certificate of service

2nd claimant

He was employed on 20th June, 2007 and dismissed on 18th July, 2010 earning a monthly wage of Kshs.8,000.00.

Claims

- (a) Notice pay Kshs.8,000.00;
- (b) Leave for one year Kshs.8,000.00;
- (c) Service pay for 3 years Kshs.12,000.00;
- (d) Compensation Kshs.96,000.00;
- (e) Salary for July, 2010 Kshs.8,000.00; and
- (f) Certificate of service.

3rd claimant

He was employed on 1st July, 2009 and dismissed on 18th July, 2010 while earning a monthly wage of Kshs.5,000.00.

Claims

- a) Notice pay Kshs.5,000.00;
- b) Leave for one year Kshs.5,000.00;
- c) Service pay for one year kshs.2,500.00;
- d) Compensation Kshs.60,000.00;
- e) Salary for July, 2010 Kshs.5,000.00; and
- f) Certificate of service.

4th claimant

He was employee on 3rd January, 2010 and was dismissed on 18th July, 2010 while earning a monthly wage of Kshs.15,000.00.

Claimant

- (a) Notice pay Kshs.15,000.00;

(b) Pro-rated leave for 7 months Kshs.7,500.00;

(c) Service pay Kshs.3,750.00;

(d) Compensation Kshs.180,000.00;

(e) Salary for July, 2010 Kshs.15,000.00; and

(f) certificate of service.

5th claimant

He was employed on 10th November, 2009 and dismissed on 18th July, 2010 while earning Kshs.6,000.00.

Claims

Notice pay Kshs.6,000.00;

Pro-rated leave Kshs.4,000.00;

Service pay Kshs.2,000.00;

Compensation Kshs.72,000.00; and

Certificate of service.

In evidence, the claimant called the 2nd claimant, Phenrick Mugatsia as the representative witness and testified that all the claimants were employed by the respondent, 1st claimant was a cook; 3rd claimant was a cleaner; 4th claimant a cook; and 5th claimant a waiter. The claimant was also a cook and was the oldest on the job having been employed on 20th June, 2007.

The respondent had two shifts per day. When the claimant finished his shift on 18th July, 2010 when he reported to work the next day he found the place locked. The respondent stated that there was no work and they were incurring losses.

The claimant would report to work at 10.30am and work until 9pm when the business closed for the day. On this day the claimants were never told not to report to work the next day. The respondent did not give notice or pay terminal dues.

No defence was filed. The respondent did not attend at the hearing. The claims are not opposed.

Determination

The failure by the respondents to respond to summons and hearing notice is regretted. Largely due to the fact that where employees are dismissed from employment due to an operational reason as stated by the claimants that the reason given for dismissal was that the respondent had no work, where there is defence, the court is able to appreciate the respondent circumstances and address it when assessing the claimant.

In the absence of defence or appearance by the respondents, the word of the employee must be believed.

Where an employee has offered their labour to an employer, the law requires that much be reduced into writing in terms of sections 8, 9 and 10 of the Employment Act, 2007. In this case there are no records of employment.

Whatever the reason for termination of employment, the law makes it mandatory for the employer to issue a written notice stating the reasons for the same. This is to enable the employer pursuant to section 47 of the Employment Act, 2007 to challenge the same if the termination of employment is not fair or justified. Where there is no notice issued or reason given, the termination of employment is unfair in terms of section 45 of the employment Act, 2007.

The claimants are therefore awarded as claimed in notice pay; leave days due; service gratuity; salary for July, 2010; each to receive a Certificate of Service and compensation at 12 months gross wage. Such compensation shall address the unfairness in the termination of employment that is gross with regard to procedural and substantive unfairness.

Judgement is entered for the claimants against the respondents jointly and severally in the following terms;

1st claimant

- (a) Notice pay Kshs.10,000.00**
- (b) Leave for 3 years Kshs.30,000.00;**
- (c) Service for 3 years Kshs.15,000.00;**
- (d) Compensation Kshs.120,000.00;**
- (e) Salary for July, 2010 Kshs.10,000.00; and**
- (f) Certificate of service**

2nd claimant

- (a) Notice pay Kshs.8,000.00;**
- (b) Leave for one year Kshs.8,000.00;**
- (c) Service pay for 3 years Kshs.12,000.00;**
- (d) Compensation Kshs.96,000.00;**
- (e) Salary for July, 2010 Kshs.8,000.00; and**
- (f) Certificate of service.**

3rd claimant

- a) Notice pay Kshs.5,000.00;**
- b) Leave for one year Kshs.5,000.00;**
- c) Service pay for one year kshs.2,500.00;**
- d) Compensation Kshs.60,000.00;**
- e) Salary for July, 2010 Kshs.5,000.00; and**
- f) Certificate of service.**

4th claimant

- (a) Notice pay Kshs.15,000.00;**
- (b) Pro-rated leave for 7 months Kshs.7,500.00;**
- (c) Service pay Kshs.3,750.00;**
- (d) Compensation Kshs.180,000.00;**
- (e) Salary for July, 2010 Kshs.15,000.00; and**
- (f) certificate of service.**

5th claimant

- a) Notice pay Kshs.6,000.00;**
- b) Pro-rated leave Kshs.4,000.00;**
- c) Service pay Kshs.2,000.00;**
- d) Compensation Kshs.72,000.00; and**
- e) Certificate of service.**

The claimants are also awarded costs.

Delivered in open court at Nairobi this 28th day of September, 2017.

M. MBARU JUDGE

In the presence of:

David Muturi & Nancy Bor: Court Assistants

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