



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 395 OF 2016

FANUEL OCHIENG MARTINSCLAIMANT

VERSUS

VATAN PLASTIC AFRICA LIMITED.....1ST RESPONDENT

KWANZA AGRO LIMITED.....2ND RESPONDENT

Mr. Mungai for claimant

JUDGMENT

1. The claimant seeks compensation for unlawful and unfair termination of employment and payment of terminal benefits to wit;

a) Two months salary in lieu of notice Kshs.140,000;

b) Salary for the months of August to November 2015, calculated at Kshs.70,000. Salary per month Kshs.280,000.

2. The claim is premised on the facts set out in the statement of claim and witness statement dated 29th February 2016, which the claimant adopted as his evidence in chief.

3. The claimant told the court that he was employed by the 1st and 2nd respondents on 1st August 2015 as an accountant at a monthly salary of Kshs.35,000.

4. The claimant worked diligently until November 2015 and was served with a verbal notice by the director for both the 1st and 2nd respondent.

5. The claimant produced a letter of demand by Otieno Arum Advocates which was not heeded to.

6. The claimant told the court that he worked for both the 1st and 2nd respondent and that the 2nd respondent was a subsidiary of the 1st respondent.

7. The claimant explained that his problems started when he asked for a written contract of employment and that he be paid his salary. The termination was immediate and without notice. The termination was also for no valid reason.

8. The claimant was not paid any salary the four (4) months he served the respondent.
9. The respondent was served with the statement of claim and summons. A return of service dated 5th May 2016 by Abel Marube Ondiek was filed on 6th May 2016. Boniface Masinde and Co. Advocates entered appearance on 19th May 2016.
10. The respondent did not file any defence to the claim.
11. The firm of Boniface Masinde and Company Advocates filed a notice of motion application on 3rd February 2017 seeking to cease acting for lack of instructions. The application was granted on 11th May 2017.
12. The matter proceeded to formal proof upon being satisfied that the respondent had been duly served with the application for withdrawal and had also been informed that the suit was set for hearing on the date but failed to attend or instruct another advocate.
13. The court is satisfied that the claimant worked for the respondent for four (4) months and was not paid a salary agreed at Kshs.35,000 per month.
14. That the claimant was dismissed without notice when he demanded to be paid and be given a written contract.
15. The termination was not for a valid reason and was not effected in terms of a fair procedure. The claimant suffered loss and damage and is entitled to one (1) month's salary as compensation in terms of section 49 (1)(c) as read with section 49 (4) for unlawful and unfair termination in the sum of Kshs.35,000.
16. The claimant is also granted one month's salary in lieu of notice in the sum of Kshs.35,000.
17. The claimant has established on a balance of probability that he was not paid four (4) months salary in the sum of Kshs.140,000 and was sacked unlawfully when he demanded to be paid and be given a written contract.
- 18. In the final analysis judgment is entered in favour of the claimant as against the 1st and 2nd respondents jointly and severally as follows;**
- (i) Kshs.35,000 in lieu of one month notice.**
 - (ii) Kshs. 35,000 being equivalent of one month salary as compensation for unlawful and unfair termination of employment.**
 - (iii) Kshs. 140,000 being four (4) months arrear salary.**
- Total award Kshs.210,000.**
- (iv) Interest at court rates on (i) and (ii) above from date of filing suit till payment in full and interest to run from date of judgment in respect of (iii) above.**
 - (v) Costs to follow the outcome.**

Dated, signed and delivered at Nairobi this 8th day of September 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE