



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 933 OF 2014
JOHN KILONZO MUTUA.....CLAIMANT
VERSUS
AUTO SPRINGS MANUFACTURERS LIMITED...RESPONDENT

Mr. Wathome for claimant

Mr. Ouma for respondent

JUDGMENT

1. The suit was filed vide a memorandum of claim on 5th June 2014. Memorandum of defence opposing the claim was filed on 12th May 2016 upon leave of court.
2. The hearing took place on 11th August 2016 in which Mr. Wathome appeared for the claimant and Mr. Ouma for respondent.
3. The claimant testified that he was employed as a Cleaner by the respondent from January 2010. That his work was to sweep. He worked from 8 a.m. to 5 p.m. from Monday to Saturday. That he was paid Kshs.413 per day. That he worked for 30 days a month. The claimant stated that he signed a voucher upon payment and the vouchers were kept by the respondent.
4. The claimant added that he was not given any leave.
5. On 2nd January 2013, the claimant reported to work and was informed by his supervisor Mr. Dickson that work had reduced and that he should go home and wait to be recalled. The claimant was not recalled until he came to court and was not paid terminal benefits.
6. The claimant seeks payment as follows:
 - (i.) One month's salary in lieu of notice – Kshs.12,390/= (413 x 30)
 - (ii.) Unpaid leave for three (3) years Kshs.37,170/=
 - (iii.) And compensation for unlawful and unfair dismissal
7. The claimant states that the respondent just wanted to dismiss him from work without justification. He

produced NSSF documents to show that the respondent paid NSSF on his behalf.

8. Under cross-examination the claimant stated he was paid fortnightly.

9. The respondent did not adduce any evidence to rebut the claim put forth. The averments in the statement of defence remain just that and cannot be relied upon to contradict the testimony by the claimant under oath.

10. The court finds that the claimant was employed by the respondent as a Cleaner for a period of three years. That he was paid Kshs.413 per day for 30 days a month. That he was not granted leave during the entire period of employment. That no notice to show cause was served on him nor was he given a hearing before he was summarily dismissed from employment.

11. That the dismissal violated Sections 41, 43 and 45 of the Employment Act in that it was not for a valid reason and was not effected in terms of a fair procedure.

12. The claimant is entitled to the terminal benefits claimed and to compensation for unlawful dismissal in terms of Section 49 (1) (c) as read with Section 49 (4) of the Act.

13. In this respect, the claimant was not paid any terminal benefits upon dismissal. He was not given any notice that his employment would come to an end. He wished to continue working and did not contribute at all to the sudden curtailment of his employment. The claimant suffered loss and damage as a result.

14. Considering these factors including that he had served the respondent for the period of three years, the court awards him three months' salary as compensation for the unlawful and unfair dismissal.

15. In the final analysis, judgment is entered in favour of the claimant as against the respondent as follows: -

(i.) Kshs.12,390/= in lieu of one month's notice.

(ii.) Ksh.37,170/= in lieu of untaken leave.

(iii.) Ksh.37,170/= being equivalent of three months' salary as compensation for the unlawful and unfair summary dismissal.

Total award is Kshs.86,730/=

(iv.) The award in (i) and (ii) above is with interest at court rate from date of filing suit while interest on (iii) above is to be calculated at the same rate from date of judgment.

(v.) Costs to follow the outcome.

Dated, Signed and Delivered at Nairobi this 13th day of October 2017

MATHEWS NDERI NDUMA

JUDGE