



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 595 OF 2015
CLAYTONE LAWRENCE INDULACLAIMANT
VERSUS
ANAHEIM ENTERPRISESRESPONDENT

M/S Kwang'a for claimant

JUDGMENT

1. Suit was commenced by a statement of claim on 16th April 2015. Seeks maxim compensation for wrongful and unfair termination of employment and payment of terminal benefits set out in paragraph 9 (a) – (f) of the memorandum of claim to wit:-

- a) Salary in lieu of notice Kshs.15,000;
- b) NSSF refund Kshs.7,200;
- c) Leave earned and not taken Kshs.157,500;
- d) Unpaid house allowance Kshs.405,000;
- e) Service pay Kshs.112,500.

2. The claimant was employed by respondent on 1st December 2002 as a Shisha attendant at a monthly salary of Kshs.15,000 per month.

3. Claimant was entitled to twenty one (21) days leave and respondent would contribute NSSF dues on his behalf.

4. Claimant served for fifteen (15) years and did not take leave for the entire period. Claimant was not paid house allowance.

5. On 6th July 2014, the respondent terminated the services of the claimant without giving any valid reason and without subjecting the claimant to a disciplinary hearing.

6. Respondent failed to pay NSSF contributions from February 2012 to July 2014. Claimant seeks payment of the dues set out in the statement of claim and compensation equivalent to twelve (12) months

salary for the wrongful and unfair termination of employment in violation of sections 41, 43 and 45 of the Employment Act, 2007.

7. The summons to enter appearance and the memorandum of claim were served by Joseph H. Otieno Odundo, an authorized process server on 14th May 2015 at respondent's town branch situated at Utalii House, ground floor along Utalii street Nairobi.

8. The respondent did not enter appearance and did not file a response nor attend several mentions and the hearing of the suit. In spite of service of various notices as seen in the file.

9. The matter was set for formal proof and the claimant testified under oath in support of the particulars of claim set out herein before. The claimant adopted a witness statement dated 29th June 2017 as his evidence in chief.

10. The claimant prayed to be awarded as per the statement of claim.

Terminal benefits

11. The claimant has proved the following on a balance of probability:-

a) That he was not paid Kshs.15,000 in lieu of notice upon termination of employment.

b) That the respondent failed to remit Kshs.7,200 to NSSF on his behalf and he is entitled to the amount.

c) That he did not take leave for a period of fifteen (15) years.

The court awards him leave in respect of the last three (3) years since the rest of the claim is caught by limitation period in terms of section 90 of the Employment Act, 2007 in the sum of Kshs.45,000/=.

d) The claimant has failed to prove that he was entitled to house allowance in addition to the salary of Kshs.15,000 he was paid monthly. This claim is dismissed.

e) The claimant is not entitled to payment of service pay because NSSF was contributed and paid by the respondent for the fifteen (15) years period he worked for the respondent except between February 2013 and July 2014 in respect of which a refund has been ordered.

Compensation

12. It is not disputed that the employment of the claimant was wrongfully and unfairly terminated since no valid reason was given and he was not subjected to a disciplinary process.

13. The court finds that the claim has been proved on a balance of probability and the claimant is entitled to compensation in terms of section 49 (1) (c) as read with section 49 (a).

14. In this respect, the claimant had served the respondent for a period of 15 years. The employment was terminated for no fault on his part. He was not paid any terminal benefits upon termination and was terminated without notice. The claimant suffered loss and damage. The claimant was given no reason for the termination and lost career prospects for no fault at all. This is a proper case to award the claimant compensation equivalent to ten (10) months salary especially given his long service and loyalty which was not rewarded at all in the end in the sum of Kshs.150,000.

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

(i.) Terminal benefits in the sum of Kshs.67,200;

(ii.) Compensation in the sum of Kshs.150,000; Total 217,200.

(iii.) The award in (i) above is payable with interest at court rates from date of filing suit till payment in full whereas compensation will be paid with interest at court rates from date of Judgment;

(iv.) Costs to follow the outcome.

Dated, signed and delivered at Nairobi this 24th day of November 2017

MATHEWS NDERI NDUMA

JUDGE