



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI

CAUSE NUMBER 1285 OF 2015

TONY KARIMI KATHUMI.....CLAIMANT

VERSUS

ALKEM LABORATORIES.....RESPONDENT

JUDGEMENT

1. The claimant testified that he was employed by the respondent from April, 2013 to October 2014 when he got dismissed. He used to work as a medical representative. His role was to market products at this chemist level and meet doctors who would give the respondent business. He would thereafter collect payments and prepare monthly reports.
2. During the course of his employment with the respondent he never had any problems and his performance was good. On 31st October, 2014 he was in the field when he received an sms to go to the office and when he went his line manager told him the company had decided not to pay him another months salary. He was surprised by the communication.
3. In cross examination he denied ever absconding duty and further denied ever resigning from work. He however stated that he was asked to write a resignation letter before he could be paid his terminal dues but he never wrote the letter. He however admitted receiving one warning letter two weeks before he was dismissed.
4. The respondent's witness Mr Nikhilesh Sarivatsava stated that he was the respondent's country manager. It was his evidence that every employee was issued a target and that the claimant was not following the standard operating procedures. The issue was severally discussed with him and that his line manager issued him with a warning letter.
5. According to him the claimant last went to the office at the end of October and that his last report was filed on 24th October. According to him, the respondent did not terminate the claimant's services. It was the claimant who absconded duties. He further informed the court that the respondent had no problem paying the claimant his terminal dues. In cross-examination he stated that no show cause meeting was called.
6. The onus of proof or justification of reason for dismissal or termination of employment is with the employer. The claimant was accused of absconding duty yet the respondent did not produce any evidence nor allege that any attempt was made to contact the claimant without success. In a case of dismissal on grounds of absconding duties, the employer must show that reasonable attempts were made to contact the

employee but without success. No such proof was laid before the court. In the circumstances the court finds and holds that the respondent failed to prove the reason for terminating the claimants services.

7. The court therefore finds and holds that the termination was unfair and hereby awards the claimant as follows:

	Kshs.
a. One month's salary in lieu of notice	50,000
b. Five months salary for unfair termination of service	<u>250,000</u>
	<u>300,000</u>
c. Costs of the suit.	
d. The respondent to issue the claimant with a certificate of service.	

8. It is so ordered.

Dated at Nairobi this 10th day of November, 2017

Abuodha J. N.

Judge

Delivered this 10th day of November, 2017

Abuodha J. N.

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.