



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

CAUSE NO 571 OF 2013

GEORGE GITHAE MAIGA.....CLAIMANT

VS

KAMPALA COACH LIMITED.....RESPONDENT

AWARD

Introduction

1. The Claimant's claim brought by a Memorandum of Claim dated 17th April and filed in Court on 22nd April 2013 seeks relief for unlawful termination of employment. The Respondent filed a defence on 30th August 2013 but did not attend the hearing in spite of due service. The Court therefore heard the Claimant *ex parte* on 18th November 2015.

The Claimant's Case

2. The Claimant states that he was employed by the Respondent in the position of Bus Conductor at a monthly salary of Kshs.8,600.00 effective 21st January 2009. He testified that he was not issued with a letter of appointment. The Claimant worked for the Respondent until 28th September 2012 when his employment was terminated. He claims salary arrears for period between January and September 2012 as well as leave pay and accumulated overtime compensation. The Claimant further states that the Respondent failed to remit statutory deductions made from his monthly salary.

3. The Claimant's claim is as follows:

- a. A declaration that the termination of his employment was unlawful
- b. Re-engagement in work comparable to that in which he was employed prior to the termination or in the alternative;

- i. 1 month's notice pay.....Kshs.8,600.00
- ii. Unpaid salary for Jan-Sept 2012.....77,400.00
- iii. 63 days' leave pay.....18,060.00
- iv. Withheld salary for 7 ½ months (Jan-April, June-Aug & ½ September 2010).....64,500.00
- v. Prorata leave (9/12x8,600).....6,450.00
- vi. Service pay (4/15/30x8,600).....17,200.00
- vii. Compensation (12x8,600).....103,200.00

viii.Unpaid overtime (1340 hours).....72,024.30

c. Costs

The Respondent's Case

4. In its defence filed on 30th August 2013, the Respondent admits that the Claimant was in its employment but denies the claim as pleaded in the Memorandum of Claim.

Findings and Determination

5. The following are the issues for determination before the Court:

- a. Whether the Claimant has proved a case for unlawful termination of employment;
- b. Whether the Claimant is entitled to the remedies sought.

Claim for Unlawful Termination

6. The Claimant testified that on 28th September 2012 he was issued with a certificate of service and told to collect his dues at a later date. He told the Court that he was not given any reason for the termination of his employment.

7. Apart from general denials in its statement of defence, the Respondent did not adduce any evidence to counter the Claimant's testimony and the Court finds that the termination was unlawful for want of substantive justification required under Sections 43 and 45 of the Employment Act, 2007. The termination was also procedurally unfair under Section 41 of the Act.

Remedies

8. In view of the finding that the termination of the Claimant's employment both substantively and procedurally unfair, I award him four (4) months' salary in compensation. In making this award, I have taken into account the Claimant's length of service and the Respondent's conduct in the termination process.

9.I also award the Claimant one (1) month's salary in lieu of notice. The Respondent did not produce any leave records to counter the claim for leave pay which therefore succeeds and is allowed. The Claimant's testimony that he was not a member of the National Social Security Fund (NSSF) was also not challenged and he is entitled to service pay.

10. The claims for unpaid salaries and overtime compensation were not proved and are dismissed.

11. Ultimately I make an award in favour of the Claimant in the following terms:

- a) 4 months' salary in compensation for unfair termination.....Kshs. 34,400.00
- b) 1 month's salary in lieu of notice.....8,600.00
- c) Leave pay for 3 years (8,600/30x21x3).....18,059.00
- d) Prorata leave for 8 months (8,600/30x1.75x 8).....4,013.00
- e) Service pay for 3 years (8,600/30x15x3).....12,899.00

Total.....77,971.00

12. The award amount will attract interest at court rates from the date of the award until payment in full. The Claimant will have the costs of this case.

13. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 29TH DAY OF JANUARY 2016

LINNET NDOLO

JUDGE

Appearance:

Mr. Ongicho for the Claimant

No appearance for the Respondent