



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT MOMBASA
CAUSE NUMBER 616 OF 2014

BETWEEN

- 1. ABRAHIM NDEMA**
- 2. MICHEAL NYAMBU**
- 3. PATRICK M. MULAKI CLAIMANTS**

VERSUS

AWANAD ENTERPRISES LIMITED..... RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Mr. Nyange Sharia Advocate instructed by Kituo Cha Sheria, Advocates for the Claimants

No appearance for the Respondents

ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

AWARD

[Rule 27 [1] [a] of the Industrial Court [Procedure] Rules 2010]

- 1. The three Claimants filed their joint Statement of Claim, on the 9th December 2014. **The 1st Claimant** states he was employed by the Respondent on 12th June 2012 up to 14th May 2014, in the position of Verification Geng. His last salary was Kshs. 10,000 per month.
- 2. **The 2nd Claimant** was employed as a Turn Boy on 2nd June 2007, later becoming a Driver. He was, like his Co-Claimants, unfairly and unlawfully dismissed on the 14th May 2014. He earned a salary of Kshs. 20,000 as of the date of dismissal.
- 3. **The 3rd Claimant** was employed as a Security Guard on 1st August 2012. He left employment under

similar circumstances as the Co-Claimants, on 14th May 2014. His monthly salary was Kshs. 10,000 as of this date.

4. The Claimants state they were never paid house rent allowance. They seek arrears of this allowance. They had in-house savings deducted from their salaries monthly. This was not paid to them on termination. They were owed upon termination, salary for April 2014 and for 14 days worked in May 2014; severance pay; notice pay; annual leave pay; and pro-rata leave. These dues have remained unpaid. They particularize their claims as hereunder:-

- a. Salary for April 2014.
- b. 14 days' salary for May 2014.
- c. 1 month salary in lieu of notice.
- d. Annual leave pay for 2013.
- e. Pro-rata annual leave for 2012 and 2014.
- f. House rent allowance at 15% of their salary.
- g. Severance pay at 15 days' salary for completed years of service.
- h. 12 months' salary in compensation for unfair termination.
- i. In- house savings at Kshs. 300 for every month in service
- j. Declaration that the above terminal benefits are payable.
- k. Release of the Claimants' Certificates of Service.
- l. Costs, Interest and Any Other Suitable Reliefs.

5. Under the above heads, the- **1st Claimant** seeks a total sum of **Kshs. 223,600**

- **2nd Claimant** ‘ ‘ ‘ ‘ ‘ **Kshs. 731,950**

-**3rd Claimant** ‘ ‘ ‘ ‘ ‘ **Kshs. 214,200**

Total..... Kshs.1, 169,750

6. There are Affidavits filed by Licensed Court Process Server, indicating the Respondent was served with the Summons and the Hearing Notice. The Respondent did not file any Response or attend the Court on hearing of the dispute. The Claimants gave uncontested evidence and closed their case on the 28th September 2015. They confirmed the filing of their Closing Submissions on the 12th October 2015.

7. The Claimants reaffirmed their respective positions as contained in their Pleadings, and summarized in the preceding paragraphs. They added they were offered less terminal dues by the Respondent than they are praying for, which offers were not acted upon by the Respondent. They left employment with nothing. The contracts were terminated on the basis of diminished work. They exited employment on redundancy. They ask the Court to grant their respective claims.

The Court Finds:-

8. The Claimants have satisfactorily shown they were employed by the Respondent Company, on terms and conditions of service contained in their letters of employment. They left employment at the instance of the Employer, who alleged there was diminished work at the enterprise. There was no evidence availed by the Respondent to show the Respondent applied the redundancy law contained in Section 40 of the Employment Act 2007, in terminating the Claimants' contracts. The Respondent did not show what the sums offered to the Claimants in terminal dues represented, under Section 40 of the Act. Redundancy itself was not shown to be a genuine redundancy, carried out fairly, as to constitute a fair termination. The Claim is well -founded under the law, and the respective contracts of employment. Compensation and terminal dues as claimed are merited. **IT IS ORDERED:-**

- a. ***It is declared termination was unfair.***

- b. *The Respondent shall pay to the 1st Claimant Kshs. 223,600; 2nd Claimant Kshs. 731,950; and, 3rd Claimant Kshs. 214, 200, as particularized in the Statement of Claim.*
- c. *Interest allowed at 14 % p.a. from the date of the delivery of the Award.*
- d. *Certificates of Service be released by the Respondent to the Claimants forthwith*
- e. *Costs to the Claimants*

Dated and delivered at Mombasa this 19th day of February, 2016.

James Rika

Judge