



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 385 OF 2014

ALEXANDER CHESAMIT

CLAIMANT

v

OL-SUSWA FARM LTD

RESPONDENT

JUDGMENT

1. Alexander Chesamit (Claimant) commenced legal proceedings against Ol-Suswa Farm Ltd (Respondent) on 22 August 2014, and he stated the issue in dispute as *unfair termination*.
2. The remedies sought by the Claimant were *wages for June 2013, 8 days wages for July 2013, 1 month pay in lieu of notice, 21 days annual leave, 32 rest (off) days, 10 public holidays, underpayment of wages, severance pay and 12 months wages as compensation*.
3. The total claim was quantified as equivalent of Kshs 92,400/-.
4. The Memorandum of Claim and Notice of Summons were served upon the Respondent, and on 6 October 2014, the firm of Mburu F.I. & Co. Advocates filed a Notice of Appointment of Advocates. However, no Response to the Claim was filed.
5. On 18 May 2015, the Cause came up for hearing. Mr. Muthanwa appeared for the Claimant stated that he was ready with 1 witness while a Mr. Stephen Gikandi who introduced himself as a Manager with the Respondent indicated that he was also ready for the hearing with 2 witnesses.
6. However, the Cause could not be reached, and the Court directed that the hearing proceed on 28 October 2015.
7. Nevertheless, come 28 October 2015, the Respondent was not represented and because the hearing date was taken in the presence of the Respondents representative, the Court allowed the hearing to proceed.
8. The Claimant gave sworn testimony. He stated that the Respondent employed him as a guard in March 2012 at a salary of Kshs 4,917/- and that on 9 July 2013, a Manager called Gikandi told him that he had instructions from Nairobi to tell him his services were no longer needed.
9. He also stated that he was not given reasons for the termination of employment and that he reported to the Labour Offices and the Labour Offices wrote to the Respondent but it did not respond to the letters.
10. On remedies, he stated that he was not paid wages for June and July 2013 and that he did not go on leave during the period of employment.
11. He also stated that he was seeking a Certificate of Service, compensation and costs.
12. Mr. Muthanwa for the Claimant informed the Court that the Claimant was abandoning the head of claim for underpayments.
13. The facts as pleaded and the Claimant's testimony remain unchallenged and uncontroverted. The Court finds the termination of the Claimant's employment unfair.

Remedies

Severance pay

14.The Claimant did not show that he was declared redundant and therefore he would not be entitled to severance pay.

Compensation

15.Compensation pursuant to section 49(1)(c) of the Employment Act, 2007 is also a discretionary remedy.

16.Considering that the Claimant served the Respondent for about 1 year, the Court would award the equivalent of 2 months' wages as compensation instead of the 12 months sought.

Other entitlements

17.These were not contested or challenged and the Court finds for the Claimant.

Conclusion and Orders

18.The Court finds and holds that termination of the Claimant's employment was unfair and the facts and testimony being unchallenged, the Court awards the Claimant as pleaded

(a) Wages for June 2013	Kshs 3,000/-
(b) Wages for July 2013	Kshs 800/-
(c) 1 month pay in lieu of notice	Kshs 4,917/-
(d) 21 days annual leave	Kshs 3,442/-
(e) 32 rest days	Kshs 5,245/-
(f) 10 public holidays	Kshs 1,639/-
(g) 2 months wages as compensation	Kshs 9,834/-
TOTAL	Kshs 28,877/-

19.The Claimant is entitled to a Certificate of Service as of right and the Respondent should issue him with one within 7 days.

20.Claimant to have costs of Kshs. 7,000/-.

Delivered, dated and signed in Nakuru on this 12th day of February 2016.

Radido Stephen

Judge

Appearances

For Claimant Mr. Muthanwa instructed by Muthanwa & Co. Advocates

For Respondent Mburu F.I. & Co. Advocates

Court Assistant Nixon