



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 382 OF 2014

KIPTARUS KIPKOSGEI TORUS CLAIMANT

v

OL-SUSWA FARM LTDRESPONDENT

JUDGMENT

1. Kiptarus Kipkosgei Torus (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. Nevertheless, no Response to the Claim was filed.
5. On 13 May 2015, the Cause came up for hearing. Mr. Muthanwa who 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 also indicated that he was ready. He also stated that the firm of Mburu F.I. & Co. Advocates had no instructions to act on behalf of the Respondent.
6. However, the Cause could not be reached, and the Court directed that the hearing proceed on 18 May 2015.
7. However, come 18 May 2015, the Court adjourned the hearing to 28 October 2015 because the Cause could not be reached again. The date was fixed in the presence of the Respondent's said Manager but there was no representation when the Cause was called out for hearing on this latter date.
8. The Claimant gave sworn testimony. He stated that the Respondent employed him as a security guard on 4 May 2012, and that on 9 July 2013 a Manager called Gikandi told him that he had instructions from the owner of the Respondent 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 one and a half months 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 that his dismissal was 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 as a matter of law.

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 contractual entitlements

17. These remain uncontested/unchallenged, and the Court finds in favour of the Claimant.

Conclusion and Orders

18. ; The Court finds and holds that the dismissal of the Claimant was unfair and the other facts and testimony being unchallenged, the Court awards the Claimant as pleaded

(a) Wages for June 2013 ; Kshs 5,500/-

(b) Wages for July 2013 ; Kshs 1,467/-

(c) 1 month pay in lieu of notice ; Kshs 5,500/-

(d) 21 days annual leave ; Kshs 4,217/-

(e) 32 rest days Kshs 5,133/-

(f) 10 public holidays ; Kshs 1,833/-

(g) 2 month wages as compensation Kshs 11,500/-

TOTAL Kshs 34,650/-

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