



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 2007 OF 2013

SAMUEL MAINA GICHUHI.....CLAIMANT

VERSUS

NATURE PHAMACY LIMITED.....1ST RESPONDENT

DR. NDUBAI NGEERA.....2ND RESPONDENT

JUDGMENT

1. The suit was commenced vide a Memorandum of claim dated 17th September 2013 seeking payment of;
 - i. Three (3) months salary in lieu of notice in the sum of Kshs.66,000.00;
 - ii. Salary for October 2011, Kshs.22,000.00
 - iii. One month salary in lieu of leave Kshs.22,000.00
 - iv. Severance pay at the rate of fifteen (15) days salary for sixteen (16) years Kshs.176,000.00; and
 - v. Twelve (12) months salary being compensation for unlawful termination of employment.
2. The brief facts of this case are that; the claimant was employed as a pharmacy assistant by the respondent at 20th Century Plaza in August 1995 and worked continuously until 15th October 2011. His duties were to dispense medicines prescribed, stock taking and taking cash. The claimant had no letter of employment. He produced a letter of request to the National Social Security Fund (NSSF) written by the 2nd respondent on 28th February 2003 to register the claimant.
3. On 1st October 2011, the claimant reported to work at 8.30 a.m. and found the shop closing down. The claimant was asked to start packing the stock. The claimant was not aware of the imminent closure. The claimant did not get a letter of termination and was not paid any terminal benefits. The claimant earned a monthly salary of Kshs.22,000 per month. The claimant stated he had no pending leave days but demanded payment of fifteen (15) days for every completed year of service since he was not registered with NSSF and the employer did not contribute to the fund. The claimant seeks to be awarded the reliefs sought.

Defence

4. The respondents were served with summons and memorandum of claim and instructed the firm of Mutua Mathura & Co. Advocates to act for him.
5. The respondents did not file any statement of defence inspite attending court on the date the matter

- proceeded to formal proof on 22nd October 2015.
6. The claimant testified under oath in support of the case.
 7. The court finds that the claims set out in the memorandum of claim were proved on a balance of probability except the claim for payment in lieu of leave days because the claimant stated that he was not owed any leave days.
 8. The claimant's employment was terminated without notice and was surprised by the sudden closure of the business. The claimant was entitled to terminal benefits for losing his employment for operational reasons. The claimant did not follow the procedure for redundancy set out under Section 40 of the Employment Act, 2007 and the termination was *ipso facto* unlawful for want of procedural fairness. Accordingly, the court finds that the claimant is entitled to compensation under section 49(1)(c) as read with section 49(4) of the Employment Act.
 9. The claimant had served the respondent for sixteen (16) years. There is no evidence of any adverse record during the service.
 10. The claimant went home penniless since no terminal benefits were paid. The loss of employment was without notice and the claimant suffered loss and pain as a result of the unprocedural termination of employment.
 11. In the final analysis the Court awards the claimant against the 1st and 2nd respondents jointly and severally as follows;
 - i. One month salary in lieu of notice in the sum of Kshs.22,000;
 - ii. Fifteen (15) days salary for the month of October 2011 in the sum of Kshs.11,00;
 - iii. Severance pay at the rate of fifteen (15) days salary for sixteen (16) years completed service in the sum of Kshs.176,000.00;
 - iv. The court further awards ten (10) months salary as compensation for the unlawful and unfair termination of employment in the sum of Kshs.220,000.00;
 - v. Total award is in the sum of Kshs.429,000.00;
 - vi. Costs of the suit;
 - vii. The award is payable with interest at court rates from date filing this suit till payment in full.

Dated and Delivered at Nairobi this 12th day of February 2016

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE