



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NO. 84 OF 2015

AWADH SAID.....CLAIMANT

VS

**STARWAYS EXPRESS COMPANY LIMITED.....1st
RESPONDENT**

**BUSCAR E. A. LIMITED.....2nd
RESPONDENT**

JUDGMENT

Introduction

1. The claimant brought this suit on 22.2.2015 and amended it on 21.5.2015. It seeks to recover terminal dues plus compensation for unlawful and unfair termination of the claimant's employment contract by the respondent in August 2014. According to the claimant his termination was without any good cause and it was done without according him a fair hearing.
2. The first respondent's did not file any defence but the second respondent denied liability in her defence. She denied any employment relationship with the claimant and further denied any relation with the first respondent. However she admitted that she used to share some offices with the 1st respondent.
3. The suit was heard on 11.2.2016 when the claimant testified as Cw1 but the respondent did not attend court to give evidence. Thereafter the claimant filed written submissions.

Analysis and Determination

4. After considering the pleadings, evidence and submissions, there is no dispute that the claimant was employed by the 1st respondent as Customer Relations Clerk from the year 2000 till August 2014 earning kshs.10,000.00 per month. There is further no dispute that the respondent's herein shared some offices. The issues for determination are:-
 - a. **Whether the respondent's are related.**
 - b. **Whether the claimant was employed by the second respondent.**
 - c. **Whether the termination of the claimant's employment was unfair and unjustified.**
 - d. **Whether the reliefs sought out to issue.**

Relationship between the Respondent's

5. Cw1 told the court that the respondent were related and were using the same office. That the second respondent was registered since the year 2000. No evidence was adduced to support the allegation that the second respondent was registered in 2000. The court has however taken note of a copy of Certificate of Incorporation for the second respondent dated 18.7.2014. Consequently, without any other evidence to the contrary, the court finds on a balance of probability that the second respondent was registered on 18.7.2014 and not in year 2000. It is therefore a separate entity from the first respondent in the absence of any evidence to link it to a legal relationship with the latter.

Relationship between the claimant and the Second Respondent

6. The Cw1 alleged that he was employed by the two respondent's herein. He however did not prove how he was working for the two companies and his salary was paid by the two. He did not call any witness to confirm his allegations. Consequently, the court finds on a balance of probability that the claimant was only employed by the first respondent who shared offices with the 2nd respondent.

Unjustified and unfair termination

7. The claimant's evidence that he was terminated for no just cause and without first giving him a fair hearing has not been disputed. Under section 45(2), termination of employment is unfair if the employer fails to prove that the termination was founded on a valid and fair reason and that it was done after following a fair hearing. In this case, the respondent never called any evidence to discharge the aforesaid burden of proof. Consequently, the court finds that the termination of the claimant's services by the 1st respondent was both unjustified and unfair.

Relief

8. In view of the foregoing finding the claimant's is awarded kshs.10,000.00 being one month salary in lieu of notice. He will also get kshs.10,000.00 being salary for August 2014. The claimant is also awarded kshs.120,000.00 being 12 months salary as compensation for unjustified and unfair termination of his employment. The reason for the maximum award is because the claimant had served the respondent for a long period and he was not entitled to any service gratuity. Finally he is awarded leave for 13 years served at the rate of 21 days per year. The reason for awarding the accumulated leave is because it amounts to a continuing breach on the part of the first respondent for which a suit was filed within 12 months of the cessation of the continuing breach. The second reason for the award is because the defence did not plead or give evidence to show that leave could not be accumulated. The claimant will therefore get $ksh.10,000 \times 21 \times 13/30 = ksh. 91,000/=$.

Disposition

9. For the reason stated above judgment is entered for the claimant against 1st respondent for the sum of **kshs.231,000.00** plus costs and interest.

Dated, signed and delivered this 13th day of May 2016.

ONESMUS MAKAU

JUDGE