



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 133 OF 2014

PAUL OCHESO OTENGO

CLAIMANT

v

CROWN BEVERAGE COMPANY LTD

RESPONDENT

JUDGMENT

1. The issues for determination in this Cause were set out in the Memorandum of Claim filed in Court on 6 May 2014 and they are
 - i. whether the dismissal of the Claimant was unfair
 - ii. whether the Claimant is entitled to notice pay, overtime and compensation.
2. The Claimant sought a whopping Kshs 6,244,551/30 in total.
3. The Respondent filed a Response through the Federation of Kenya Employers on 24 July 2014, and the Cause was heard on 23 April 2015 when the Claimant testified.
4. The Respondent's case was set for 9 July 2015, and later 9 November 2015 but no witnesses were called.
5. The Court also urged the parties to attempt out of court settlement but no settlement was reached.
6. The Claimant filed his submissions on 2 December 2015, while the Respondent's submissions were not on file by 29 January 2016 as was directed.

Whether dismissal was unfair

7. The Claimant testified that on 11 May 2013 he was informed by his Manager (Richard Egal) that the vehicle he had been driving was up for sale and therefore he should wait at home to be called. He waited for 2 months but he was not called and when he inquired in July 2013, he was sent on 21 days leave.
8. On resumption after the leave, he was issued with a dismissal letter dated 25 July 2013, at the reception.
9. On why the dismissal was unfair, the Claimant testified that he was not afforded an opportunity to be heard nor given notice of termination. He denied that he was absent without permission as alleged in the dismissal letter.
10. The Claimant's testimony remains unchallenged and uncontroverted.
11. The Court is therefore satisfied that the Claimant has met the low threshold obligation placed upon employees by section 47(5) of the Employment Act, 2007, that there was unfair termination of employment.
12. The Claimant's testimony that there was no hearing similarly remains uncontested, and the Court reaches the conclusion that the dismissal was procedurally unfair.
13. Because the Respondent did not call any witnesses to prove the reasons for dismissal, and that

Radido Stephen

Judge

Appearances

For Claimant

Mr. Bichanga instructed by Korongo & Co. Advocates

For Respondent
Employers

Mr. Masese, Senior Legal Officer, Federation of Kenya

Court Assistant

Nixon