



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT MOMBASA
CAUSE NUMBER 529 OF 2014

BETWEEN

SAID OCHIENG ODHIAMBO CLAIMANT

VERSUS

RANDA COACH LIMITED RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Mr. Odhiambo Advocate instructed by Odhiambo S.E. & Company Advocates for the Claimant

No appearance for the Respondent

ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

AWARD

[Rule 27 [1] [a] of the Industrial Court [Procedure] Rules 2010]

1. The Claimant filed his Statement of Claim, on 30th October 2014. He avers he was employed by the Respondent as a Guard, between 2008 and April 2013. The Respondent terminated the Claimant’s contract on the latter date. There was no notice and justification of the termination decision by the Employer. The Claimant feels he was unfairly treated, and prays for the following orders against the Respondent:-

- a. A declaration that termination was unfair and unlawful.
- b. 1 month salary in lieu of notice at Kshs. 8,000.
- c. 12 months’ salary compensation for unfair termination at Kshs. 96,000.
- d. Terminal benefits for 5 years at Kshs. 20,000

Total..... Kshs. 124,000

The Claimant prays for costs and interest.

2. There are affidavits of service filed, indicating the Respondent through its Managers were served with the Court Summons, Mention Notices and the Hearing Notices. The Respondent did not file any Statement of Response, or attend Court in any session. The Claimant gave evidence, submitted and closed his case, on the 16th March 2016.

3. He testified he currently makes a living as a boda boda (motorcycle) rider. He previously worked for the Respondent as a Guard. He guarded vehicles at Makaburini, within the City of Mombasa. He worked for 5 years. He earned Kshs. 8,000 per month. He was not given notice of termination, or reasons for termination. He was paid terminal dues at Kshs. 17,000. He was not told what specifically this figure represented. He submits termination was unfair. There was no evidence from the Respondent rebutting the evidence given by the Claimant.

The Court Finds:-

4. The Claimant's pleadings, evidence and submissions are without contestation. The Court is satisfied he was employed by the Respondent, on the terms and conditions of service stated by the Claimant. He was dismissed without notice, or justification. He was paid a sum of Kshs. 17,000 as terminal benefits. Details of the terminal benefits under specific heads were not given to the Claimant. He worked for 5 years. His salary was Kshs. 8,000 per month. The Respondent did not adhere to Section 41, 43 and 45 of the Employment Act 2007. Substantive and procedural justice was disregarded. ***He merits and is granted compensation for unfair termination, the equivalent of his 10 months' gross salary at Kshs. 80,000, under Section 49 of the Employment Act 2007 and Section 12 of the Employment and Labour Relations Court Act.***

5. ***Notice pay is merited under Section 36 of the Employment Act, and is allowed at Kshs. 8,000 as prayed.***

6. The Claimant prays for terminal benefits for 5 years. The Court understood this to be a prayer for service pay, as terminal benefits normally denote the totality of benefits paid to an Employee on termination. The terms service pay, severance pay and terminal benefits are loosely interchanged, but the Court feels Parties should avoid this loose use, as these are separate concepts under employment law. Terminal benefits is a general term, service pay is made under Section 35 [5] of the Employment Act 2007, while severance pay applies under Section 40 of the same Act, on redundancy. The Claimant prays for Kshs. 20,000 in what the Court understood to be service pay.

7. He worked for 5 years. The rate adopted under the Regulation of Wages [Protective Security Services] Order is 18 days' salary for every year completed in service, in computing service/ gratuity pay for Guards with service of 5 years and above. ***Adopting this formula, the Court grants the Claimant service pay at Kshs 8,000 divide by 26 working days = Kshs. 307.70 x 18 = Kshs. 5538.40 x 5 = Kshs. 27,692.30.***

8. The sum of Kshs. 17,000 paid to the Claimant to be deducted from this Award.

9. IN SUM, IT IS ORDERED:-

- a. ***Termination was unfair.***
- b. ***The Respondent shall pay to the Claimant 10 months' gross salary in compensation at Kshs. 80,000; 1 month salary as notice pay at Kshs. 8,000; and service pay at Kshs 27,692.30 = Kshs. 115, 692 .30 less Kshs. 17,000 – total Kshs. 98,692.30.***
- c. ***The sum shall be paid in full within 30 days of the delivery of this decision.***
- d. ***Costs to the Claimant.***
- e. ***Interest on the principal amount at 14% per annum from the date of the Award.***

Dated and delivered at Mombasa this 8th day of July, 2016

James Rika

Judge