



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1391 OF 2014

PAUL KILONZO.....CLAIMANT

VERSUS

SILPACK INDUSTRIES LTD.....RESPONDENT

JUDGEMENT

1. The suit is based on amended statement of claim filed on 13th February 2015. The claimant seeks payment of terminal benefits set out under paragraphs 6 and 8 of the amended statement of claim and 12 months' salary being compensation for the alleged unfair and wrongful dismissal.
2. The suit was initially filed in the Principal Magistrate's court at Nairobi as Civil Suit No 5814 of 2010. The matter was subsequently transferred to this court by Lady Justice R. E. Ougo on 16th May 2014 pursuant to an objection raised by J. Malik counsel for the respondent.
3. The claimant served the amended statement of claim on 13th February, 2015. The respondent did not file a response to the initial suit at the Principal Magistrate court nor did it file a statement of response to the amended statement of claim.
4. The respondent's advocates were served with hearing notice of the matter on 2nd June 2016. The hearing was set for 4th July 2016. The firm of advocates acknowledged receipt of the hearing notice by appending its official stamp and signing against it. The return of service was filed in court on 15th June 2016.

Determination

5. The suit by the claimant remains undefended. The claimant testified under oath in support of the particulars of claim. The court finds that the claimant has proved on a balance of probabilities that he was an employee of the respondent from January 2001 as a carton balling machine operator earning a monthly salary of Kshs 6,656.
6. The claimant served the respondent diligently and continuously until 23rd May 2008 when his employment was terminated without a valid reason and without following a fair procedure. In terms of the Employment Act cap 226 of the laws of Kenya (now repealed), and the Trade disputes Act cap 234 (now repealed), the claimant is entitled to compensation for the unlawful termination of his employment.
7. The claimant has proved that he was not given notice of termination nor was he paid in lieu thereof. The claimant worked overtime and was not paid as claimed.

8. The respondent did not remit NHIF and NSSF dues deducted from the claimant as claimed. The claimant was also entitled to payment of service gratuity for the seven (7) completed years of service at the rate of 15 days salary for every completed year of service. The claimant is also entitled to house allowance for the period since he was not housed and was not paid house allowance.

9. The court awards the claimant as follows;

- i. Kshs 6,656 in lieu of notice
- ii. Kshs 45,384 overtime worked
- iii. Kshs 23,296 service gratuity for 7 years
- iv. Kshs 87,832 house allowance for 7 years

Total terminal benefits Kshs 159,168.00

10. The claimant is also awarded compensation equivalent to seven (7) months' salary for the unlawful termination of employment in the sum of Kshs 46,592.

Total award is Kshs 205,760

- v. The award is payable with interest at court rates from date of filing suit till payment in full
- vi. Costs follow the outcome

Dated and delivered at Nairobi this 9th day of September, 2016.

MATHEWS N. NDUMA

PRINCIPAL JUDGE