



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

CAUSE NO. 544 OF 2015

GEORGE MORARA NYANG'AU.....CLAIMANT

VERSUS

CREATIVE CONSOLIDATED SYSTEMS LIMITED.....RESPONDENT

Mr. Bosire for claimant

Mr. Mugambi for respondent

JUDGMENT

1. In this matter, the defendant entered appearance on 29th May 2015 after being served with the summons and memorandum of claim filed on 7th April 2015.
2. On the 4th April 2016 the hearing date, Mr. Murage for Mr. Mungambi Advocate appeared for the respondent but failed to offer any explanation why they had failed to file a defence to the suit about one year after entering appearance. The matter therefore proceeded for formal proof on 4th April 2016.
3. The particulars of claim have not been placed in dispute. The claimant seeks compensation for unfair and unlawful termination of employment and payment of outstanding terminal benefits.
4. The claimant was employed by the respondent in the position of a driver vide a letter of appointment dated 28th February 2014. The claimant earned a consolidated salary of Kshs.40,000 and was entitled to twenty one (21) working days leave per year. Termination of employment was by either party upon giving one month notice or payment in lieu thereof.
5. The contract was due to end on 29th February 2015.
6. In his sworn testimony, the claimant testified that he worked continuously for five months and then got sick. He was given ten (10) days sick-off by the respondent and returned on 11th September 2014. Upon return, the claimant was informed that his work was not satisfactory and he should go back home.
7. On 15th October 2014, the claimant was called back to work and was informed that there was no more work for him. He was not paid any terminal benefits.
8. The respondent deducted NSSF and NHIF from the claimant's salary according to the statement of claimant's account produced but the claimant testified that the dues were not remitted by the respondent.

9. The claimant stated that the termination of his employment was unlawful and unfair and he seeks payment of notice pay, severance pay, and compensation as per the memorandum of claim.

10. There being no defence to the claim, the court finds that the claimant has proved the particulars of claim on a balance of probability and awards the claimant as follows;

a. One month salary in lieu of notice in the sum of Kshs.40,000;

b. Equivalent of the unserved term of the contract, being six (6) months salary in the sum of Kshs.240,000 as compensation for the unlawful and unfair termination of employment, which was done for no valid reason and without following a fair procedure contrary to section 43 and 45 of the Employment Act, 2007.

c. The respondent did not remit NSSF on behalf of the claimant and therefore the claimant is entitled to service gratuity equivalent to fifteen (15) days salary for the one year contract in the sum of Kshs.20,000;

The total award to the claimant as against the respondent is Kshs.300,000;

d. The award is payable with interest at court rates from date of filing suit till payment in full;

e. Costs to follow the outcome.

Dated and delivered at Nairobi this 25th day of November 2016

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE