



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 554 OF 2014

CHRISTOPHER KIPSANG BIWOTT

CLAIMANT

v

EMROCK INVESTMENT TEA FACTORY LTD RESPONDENT

JUDGMENT

1. This Cause proceeded to hearing on 10 March 2016 in the absence of the Respondent and its advocate who had been served with a hearing notice.
2. The Respondent attempted through a motion filed in Court on 30 March 2016 to have the *ex parte* proceedings set aside, but in a ruling delivered on 30 September 2016, the Court declined to set aside or re-open the proceedings and directed that a judgment would be delivered today.
3. The Claimant had initially filed written submissions on 21 March 2016.
4. The Claimant's case was that the termination of his employment on 3 September 2014 was unlawful because he was not given notice of termination of employment or a dismissal letter.
5. During oral testimony, the Claimant also contended that the termination of employment was actuated by the fact that he had sued the Respondent in a case arising out of an injury sustained in the work place.
6. The Court notes from the file that there is no Response on record.
7. The Claimant's case being unchallenged/uncontroverted on the pleadings and facts as presented during the hearing, and considering that section 35 of the Employment Act, 2007 envisages written notice of termination of employment; section 41 a hearing and section 43 proof of the reasons for termination of employment, the Court finds that the termination of the Claimant's employment was unfair.

Appropriate remedies

2 months' pay in lieu of notice

8. The Claimant did not lay any contractual foundation for 2 months' pay in lieu of notice and therefore the Court will find that section 35(1)(c) of the Employment Act, 2007 becomes implicated in terms of which he is entitled to 1 month pay in lieu of notice (pay slips produced and Court has considered pay slip for July 2014 being last full month worked).

Service pay

9. The pay slips filed in Court by the Claimant show he was contributing to the National Social Security Fund, and in terms of section 35(5) and (6) of the Employment Act, 2007 he is not entitled to service pay.

Compensation

10. The Court having found that the termination of the Claimant's employment was unfair, and in consideration of the fact that he served the Respondent for about 3 years, is of the view that the equivalent of 5 months gross wages would be fair compensation.

Conclusion and Orders

11. The Court finds and holds that the termination of the Claimant's employment was unfair and awards him and orders the Respondent to pay him

(a) 1 month pay in lieu of notice	Kshs 5,169/-
(b) Compensation	Kshs 27,465/-
TOTAL	Kshs 32,634/-

12. Claimant to have costs.

Delivered, dated and signed in Nakuru on this 11th day of November 2016.

Radido Stephen

Judge

Appearances

For Claimant Mr. Bichanga instructed by Chepkwony & Co. Advocates

For Respondent S. K. Kitur & Co. Advocates (no Response filed/no attendance during hearing)

Court Assistant Nixon