



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1308 OF 2013

DAVID ONDERI NYANGAU.....CLAIMANT

VERSUS

SOROYA INVESTMENTS LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant filed his memorandum of claim on 16th August 2013 and through it sought resolution of 4 issues.

1. Illegal and unfair termination of contract of service of the Claimant by the Respondent.
2. Unlawful dismissal of the Claimant by the Respondent without any justification at all
3. Breach of contract of service of the Claimant by the Respondent.
4. Failure by the Respondent to pay the Claimant compensation for the loss of earnings resulting from premature termination of the Claimant's contract of service.

2. The Claimant averred that he was employed by the Respondent from March 2012 to 5th July 2013 but was summarily dismissed from the Respondent before the expiry of this contract. To him the dismissal was unlawful and without any justification at all. No notice prior to termination was given and thus sought payment of one month salary in lieu of notice, one year gratuity, compensation for loss of employment as carpenter for 3 years 2 months, compensation of employment for loss of employment as electrician for 24 months, house allowance, accrued leave, overtime accrued, medical expense NHIF for 38 months. In addition to this he also sought costs of the suit, interest on the sums claimed and a declaration that the termination was unfair, unlawful and contrary to the law of employment.

3. At the time the Claimant testified on 9th February 2015 the Respondent though served did not enter appearance or file any defence and the cause proceeded as an undefended cause. The Respondent finally filed a Memorandum of Appearance on 26th February while the judgment was pending.

4. In his testimony the Claimant stated that he was an electrician employed by the Respondent and

was terminated without notice. He was paid 13,000/- per month. He had a two year contract. His only pay was the salary. He sought payment of NSSF and NHIF dues, notice, service pay and the costs of the suit.

5. The contract he exhibited provided that he was to receive a net salary of Kshs. 13,600/- only subject to an annual increment in accordance with labour laws. His shift timings were from 8.00am to 5.00pm and he was entitled to 21 days of annual leave. The contract provided for one month notice prior to termination of the contract.

6. Thought the suit was undefended, the Claimant had an obligation under the Employment Act Section 47 which provides that for any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee.

7. He had an obligation to prove that the termination was unfair and he failed to discharge the burden. He also failed to prove that statutory deductions were not made and paid out to the relevant agencies. No statement from either the National Social Security Fund or the National Hospital Insurance Fund was provided. The Claimant did not avail copies of letters demanding payment of overtime or time sheets showing he worked beyond the stipulated times.

8. The contract was for 2 years and was extinguished before the expiry of the term. The Claimant's net salary was 13,600.25 as shown by the copies of cheques and deposit slips. That means that his earnings were slightly above the figure of 13,600.25. NSSF and NHIF deductions are Kshs. 200/- and Kshs. 320/- respectively per month.

9. Accordingly I will enter judgment for the Claimant for Kshs. 13,600.25 being one months' salary in lieu of notice. This sum will not be subject to any deduction. There will be no order as to costs.

Orders accordingly.

Dated and delivered at Nairobi this **18th** day of **March** 2015

Nzioki wa Makau

JUDGE