



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1078 OF 2012

(Before Hon. Justice Hellen S. Wasilwa on 7th April, 2015)

RAPHAEL KITUKUCLAIMANT

VERSUS

ALPHA KNITS LIMITEDRESPONDENT

JUDGMENT

1. The Claimant herein Raphael Kituku filed his Memorandum of Claim on 22/6/2012 through the firm of Gakoi Maina & Co. Advocates. The Claimant's case is that on 1/6/2006, he was employed by the Respondent as an Artisan and he annexed his employment I/D card as proof of this relation. He avers that under the terms and conditions of service as well as the Employment Act 2007, the Respondent was obliged to pay him all dues owing prior to terminating his services which was not done.

2. It is the Claimant's case that on 18/4/2011, the Respondent orally dismissed him accusing him of refusing to obey a lawful and proper command which was in the scope of his duties to obey and creating a breach of peace both of which were not proved nor the Claimant given an opportunity to defend himself thus making his dismissal unfair.

The Claimant further avers that he worked for the Respondent for a period of 58 months and he was never paid his leave days accrued nor one month salary in lieu of notice nor his severance benefits accrued to him by virtue of the employment.

The Claimant's claim is for payment of Kshs.151,083.33 as per his memorandum of claim.

Respondents case

3. The Respondents filed their Memorandum of appearance dated 13/5/2013 through the Federation of Kenya Employers. They failed to file any defence and so this case proceeded as a Formal Proof.

Issues for determination

4. Considering the evidence adduced by the Claimant, there is proof that he was an employee of the Respondent. The mode of engagement is however not clear as there was no written employment contract. As per Appendix 2, the Claimant was even injured while on duty on 5/12/2008 at 8.30 am and the Respondent filled and signed form LD/04/1 notifying of this injury for purposes of Workmen's Compensation Act.

5. The Respondent had a chance to rebut the Claimant's averments but failed to do so. It is this courts'

finding that the claimant has established his case as expected. I find for him and award him as follows:

- a. 1 month salary in lieu of notice = Kshs.9,250/=
- b. 12 months salary as compensation for unlawful termination =

$$\text{Kshs.9,250} \times 12 = 111,000/=$$

- c. Service pay equivalent to 15 days salary for each year worked

$$= \frac{1}{2} \times 9,250 \times 5 = 23,125/=$$

TOTAL Awarded = Kshs.143,375/=

- d. The Claimant shall be issued with a Certificate of Service.

The Respondents will pay costs of this suit.

It is so ordered.

Dated and delivered in open court this 7th day of April, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Claimant

No appearance for Respondent