



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT OF KENYA AT NAIROBI

CAUSE NO. 1499 OF 2011

JESSE K. NDERITU CLAIMANT

VERSUS

FINE SPINNERS LIMITED RESPONDENT

Nyabena for the Claimant

JUDGMENT

1. This matter proceeded ex-parte on 9th October 2014, the hearing date having been taken way back on 16th December 2013.

2. Mrs Mwabure appeared for the respondent and was holding brief for Ms Ngeresa. Mr. Nyabena for Claimant was ready to proceed but the Respondent alleged inability to proceed due to lack of instructions from the respondent.

The Claim is thus undefended.

3. The Claimant testified in support of the particulars of claim contained in a statement of claim dated 6th September 2011 and filed on 7th September 2011.

4. Though the Respondent did not participate in the hearing, had already filed a Statement of Defence dated 4th October 2011.

Facts of the claim

5. The Claimant was employed by the Respondent as a Production Supervisor in September 2001 earning a basic salary of Kshs.330.00 per day.

He was given a letter of appointment accordingly.

The Claimant was confirmed in this position in May 2004, and his salary was raised to Kshs.8,500.00 plus house allowance.

This was later increased to Kshs.10,550.00 per month, which salary the Claimant earned at the time of termination of employment on 1st January 2010.

6. The termination was without notice and no reason was assigned for the termination. The Claimant was simply stopped at the gate when reporting to work in the morning and told the employment had ceased with immediate effect.
7. The Claimant states that he was paid a salary that was less than that earned by the subordinates he supervised who were unionsable. The Claimant avers that he ought to have been paid Kshs.23,000.00 per month instead of Kshs.10,550.00. He thus claims a monthly underpayment of Kshs.12,450.00 for six years in the sum of Kshs.896,400.00.
8. He claims two (2) months salary in lieu of notice in the sum Kshs.46,000.00.
9. Further claim is for service gratuity calculated at twenty (20) days salary for eight (8) years in the sum of Kshs.112,000.00.
10. Further, the Claimant seeks twelve (12) months compensation for the unlawful and unfair dismissal in the sum of Kshs.276,000.00 and grant of certificate of service.
11. The Claimant wrote a demand letter upon termination but the Claim was not made good. The Claimant prays to be awarded as prayed.
12. In the Statement of Defence, Respondent admits the particulars of employment set out in paragraphs 3 and 4 of the Statement of claim.
13. The Respondent admits terminating the employment of the Claimant without assigning any reason for the termination.
14. The Claimant admits receiving the notice of demand from the Advocates for the Claimant adding that the Claimant took six months to provide the details for computation of the terminal dues contained in the letter of 30th March 2011.
15. The Respondent does not specifically deny the contents of this letter which contains the Claims set out by the Claimant in his Statement of Claim.
16. The Respondent admits that it has failed to pay the Claimant as demanded.

Determination

17. A perusal of the pleadings leads the Court to the conclusion that the particulars of claim contained in paragraph 8 of the Statement of Claim are not specifically denied.
18. The Respondent made a general denial of the contents of paragraph 6, 7 and 8 of the statement of claim and called no evidence at all to clarify the matter.
19. The Court finds that the Claimant has on a balance of probabilities proved the particulars of claim with regard to the terminal dues owed to him by the Respondent and awards the Claimant as follows;
 - (i) two (2) months salary in lieu of notice in the sum of Kshs.46,000.00;
 - (ii) salary underpayment for six (6) years in the sum of Kshs.896,400.00;
 - (iii) service gratuity for eight (8) years in the sum of Kshs.112,000.00.
20. Furthermore, the Claimant has established that his employment was terminated without notice and with no valid reason assigned to it. The claimant was also not subjected to a disciplinary hearing and the

termination was therefore in terms of an unfair procedure. He was simply locked out of the work premises.

21. The Court awards the Claimant in terms of **Section 49(1)** as read with **Section 49(4)** ten (10) months salary as compensation for the unlawful and unfair termination of employment in the sum of Kshs.230,000.00.

The total Award to the Claimant is Kshs.1,284,400.00.

The award is payable with interest at Court rates from date of this judgment till payment in full.

The Claimant is also to be provided with a certificate of service within fourteen (14) days from todate.

The Claimant is awarded costs of the suit.

Dated and Delivered this at Nairobi this 8th day of May 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE