



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 743 OF 2014

CHRISTOPHER OCHIENG ONYANGO.....CLAIMANT

VERSUS

ACME CONTAINERS LTD.....RESPONDENT

JUDGMENT

1. On 12th February, 2015 I became aware that the respondent offered to pay the claimant the sum of Kshs.57,500 but which the claimant had not collected. From the memorandum of claim, the Court noted that the claimant was seeking one month's pay in lieu of notice and twelve month's salary as compensation for unfair dismissal. Consequently I entered judgment in favour of the claimant for the admitted amount of Kshs.57,500/= and invited submissions on the issue of notice and unfairness or otherwise of the claimant's termination of services. This judgment is therefore on these two issues only.

2. In the memorandum of claim filed on 7th May, 2014, the claimant avers that he served the respondent diligently during the period of his employment and that no reasons were given for his termination and that he was not accorded an opportunity to defend himself upon termination. The respondent on the other hand averred through its memorandum of response filed on 13th June, 2014 that the claimant's services were terminated in accordance with the law. The respondent neither gave particulars of the reasons for termination and the process followed in carrying it out nor attached any dismissal or termination letter to vouch for the averment that the claimant's services were properly terminated.

3. This Court has stated severally before that termination of employment is a two prolonged process. That is to say, there has to be a valid reason for terminating employee's services and second the termination must be carried out using a fair procedure, the essential component of which is that such an employee must be accorded an opportunity to be heard in his defence prior to the termination. Further, the onus of justification for the dismissal rests with the employer.

4. Having reviewed the pleadings and submissions by counsel for the respondent, the Court is of the view that this burden has not been discharged by the respondents with the consequence that the Court finds the claimant's dismissal unfair.

5. Regarding quantum of compensation, this is at the discretion of the Court subject to a maximum of twelve month's wages. In exercising this discretion the Court must be furnished with sufficient material or evidence the duty of which is on the claimant, to show that the dismissal or termination was wrongful or unfair. In this particular case, the claimant just like the respondent, has failed to sufficiently

demonstrate either in the pleadings or evidence why in his view he considered the termination unfair.

6. In the circumstances the Court will award him nominal compensation to the extent of one month's wages only. The claimant shall have costs of the suit.

7. It is so ordered.

Dated at Nairobi this 31st day of July 2015

Abuodha J. N.

Judge

Delivered this 31st day of July 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge