



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1751 OF 2014

(Before Hon. Justice Hellen S. Wasilwa on 27th July, 2015)

YUSUF GUYO ODAWA.....CLAIMANT

VERSUS

ROY TRANSMOTORS LIMITEDRESPONDENT

JUDGMENT OF THE COURT

1. The Claimant herein Yusuf Guyo Dawa filed his Memorandum of Claim on 8/10/2014 through the firm of Mwakio, Kirwa & Company Advocates. The Claimant avers that he was employed by the Respondents on 30/6/2011 as a Security Guard. The Certificate of Service (Appendix 1) bears evidence of this relation.
2. The Claimant avers that he served the Respondents with diligence and loyalty until 11/3/2014 when his services were terminated unlawfully.
3. It is the Claimant's case that on this day he was assigned to go to a certain premise by his boss but he feared to go there as there had been theft at those premises. The boss then chased him out of the premises and prevented him from accessing it from that point. On 10/4/2014, he was paid 26,000/= and asked to go away being 1 months notice, 20 days salary and 18 days of leave.

The Claimant avers that he was not being paid leave allowance nor overtime despite working from 6 am to 6 pm and never used to go for off. He avers that he used to work even during public holidays. He stated that his salary was Kshs.12,500/= per month.

4. The Claimant further avers that his termination was unlawful and unfair as the Respondent failed to follow procedure laid down in Employment Act before terminating him and without proving that the reasons for termination were valid.

The Claimant therefore seeks that this court orders he be paid his termination benefits as per paragraph 7 of his Memorandum of Claim totaling 483,831.75/= plus costs of this suit.

5. The Respondents were served with the summons to enter appearance and Memorandum of Claim on 20/10/2014 as per the affidavit of service filed in court on 9/6/2015. The Respondents never entered any appearance and neither did they file any response. This case therefore proceeded exparte.
6. There is proof that the Claimant worked for Respondent as per the Certificate of Service he was given upon termination on 11/3/2014. No appointment letter was however exhibited. This was

the duty of the Respondent to give as provided for under Section 9 (1) (b) of the Employment Act.

In absence of a written contract, this court will rely on the evidence of Claimant wholly which is not controverted. The process of terminating the Claimant's services appears to have been verbal and there is no evidence that he was given any hearing as anticipated under Section 41 of Employment Act 2007.

7. I therefore find that the termination of the Claimant was unlawful and unfair as under Section 45 (1) and 2 of the Employment Act 2007 which states as follows:

1. *No employer shall terminate the employment of an employee unfairly.*
2. *A termination of employment by an employer is unfair if the employer fails to prove:*

- a. *that the reason for the termination is valid;*
- b. *that the reason for the termination is a fair reason:-*

- i. *related to the employee's conduct, capacity or compatibility; or*
- ii. *based on the operational requirements of the employer; and*

- c. *that the employment was terminated in accordance with fair procedure.*

8. I therefore find for Claimant and I award him as follows:

1. *House allowance being 15% of the salary = 1875 x 33 months = 61,875*
2. *Service pay at the rate of 15% days for each year worked being 15/30 x 12,500 x 3 = 18,750/=*
3. *12 months salary as damages = 12,500 x 12 = 150,000/=*

TOTAL = 230,625/= plus costs and interest

It is so ordered.

Read in open Court this 27th day of July, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Claimant - Present

No appearance for Respondent