



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT NAIROBI

CAUSE NO. 570 OF 2013

WILSON MATHEE IRERI CLAIMANT

-VERSUS-

KAMPALA COACH LIMITED RESPONDENT

JUDGMENT

This case has been filed by Wilson Mathee Ileri who in the Memorandum of Claim dated 17th April 2013 and filed in court on 22nd April 2013 alleges unlawful summary dismissal and failure to pay his terminal dues by his employer Kampala Coach Limited. He seeks the following orders that:-

1. The termination be declared unlawful and hence null and void.
2. The respondent do re-engage the grievant/claimant in work comparable to that in which the grievant/claimant were employed prior to his dismissal or other reasonably suitable work at the same wages with no loss of benefits together with salaries and allowances in arrears for both the period they have been working and out of office/work.
3. Reinstate the grievant and treat him in all aspects as if the employment had not been terminated.

The respondent, a registered bus company engaged in passenger transport and courier services filed a defence to the Memorandum of Claim on 28th August 2013 denying all the allegations in the Memorandum of Claim save that claimant was its employee.

The case came up for hearing on 5th February 2014. Mr. Ongicho instructed by Ongicho-Ongicho & Co. Advocates appeared for the claimant. There was no appearance for the respondent. Mr. Ongicho informed the court that the respondent was served with a hearing notice on 6th December 2013 and acknowledged service.

The court record shows that the respondent filed a Notice of Appointment of advocates through Omariba & Company Advocates dated 16th May 2013 and filed in court on 26th August 2013. Another notice of appointment was filed by Soita & Saende Advocates dated 14th October 2013 and filed in court on 16th October 2013. The hearing notice was served upon Soita & Saende Advocates. A return of service with a copy of the hearing notice duly received and stamped by the advocates on 6th December 2013 was filed in court on 11th December 2013. Having confirmed that the respondent was properly served with hearing notice I permitted the claimant's case to proceed in the respondent's absence.

On the hearing date Mr. Ongicho sought leave to proceed with the case by way of written submissions. I granted the leave and directed that a copy of the submissions together with mention notice for 19th February 2014 be served upon the respondent.

On 19th February 2014 when the case was mentioned Mr. Mburugu holding brief for Mr. Ongicho appeared for the claimant and Mr. Ochola held brief for Mr. Isinta for the respondent.

The respondent sought leave to file their Reply to the Memorandum of claim together with written submissions within 21 days. The leave was granted and the case fixed for another mention on 12th March 2014 to confirm filing by the respondent and to take date for judgment.

On 12th March 2014 when the case came up for mention Mr. Ongicho appeared for the claimant but there was no appearance for the respondent. The respondent had also not filed their written submissions. Upon request by Mr. Ongicho I fixed the date for judgment.

The claimant's case is that he was employed by the respondent on 1st October 2011 as a bus driver and was assigned driving duties on routes Nairobi-Kampala (Uganda)-Juba (South Sudan; Nairobi-Kigali (Rwanda)-Juba (South Sudan). His employment was terminated by letter of summary dismissal dated 31st December 2012. The grounds for dismissal were that he had not been taking his duties seriously and was absent without permission on 4th October 2012. The letter stated he would be paid for days worked, any outstanding leave days and any other monies owed less any company liabilities.

The claimant submitted that the summary dismissal was unfair as fair procedure was not followed in terminating his service. He was never accorded a chance to defend himself and was not issued with a certificate of service. He further submitted that he was never issued with any warning letters during the subsistence of his employment.

In the respondent's defence there are mere denials of all the contents of the Memorandum of Claim. The respondent however admitted that the claimant was employed by the respondent.

In the absence of any serious defence and the admission of employment of the claimant, the claimant's averments in the Memorandum of Claim to the effect that he was unfairly terminated remain uncontroverted. The letter of dismissal in the claimant's bundle of documents does not contain any evidence of hearing. There is no denial that his salary was Kshs 20,000/= per month or that the respondent owed the claimant salary for 13 months and leave. The claimant has however not submitted evidence to support the claim for 500 hrs overtime or a break down of how the overtime hours arose.

From the foregoing, I enter judgment for the claimant against the respondent and award the claimant the following:-

- i. 1 month's salary in lieu of notice in the sum of Kshs 20,000/=
- ii. Salary for October and November 2011 and January to September 2012 at Kshs 20,000/= per month for 11 months Kshs 220,000/=
- iii. Unutilized leave 21 days Kshs 14,000/=
- iv. Service pay Kshs 10,000/=
- v. Compensation.

Having been in employment for only one year I award the claimant 2 months salary as compensation in the sum of Kshs 40,000/=.

- vi. Withheld salary for July and August 2012. I find this to be a duplication of prayer 2 above as both the months of July and August 2012 are covered under prayer (ii).
- vii. Pro - rata leave.

I have already included this under prayer (iii) above.

In summary, I award the claimant a total sum of Kshs 304,000/= as more specifically set out above. The respondent shall also pay claimant's costs of this suit.

Dated at Kisumu this 16th day of June, 2015

MAUREEN ONYANGO

JUDGE

Delivered in Nairobi this 7th day of July, 2015

HELLEN WASILWA

JUDGE

In the presence of:

..... for claimant

..... for respondent