



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI
CAUSE NO. 505 OF 2014

WAIRIMU KAGUNYA..... CLAIMANT

VERSUS

THREE DEE ENTERPRISES LIMITED RESPONDENT

Mr. Kiarie for Claimant

JUDGMENT

1. The suit was brought via a memorandum of claim filed on 12th March 2014.
2. The Claimant seeks payment of terminal benefits to wit:
 - i. one (1) month's salary in lieu of notice in the sum of Kshs.17,600.00;
 - ii. accrued leave days in the sum of Kshs.10,266.67
 - iii. unpaid house allowance for the period June to December 2012 in the sum of Kshs.16,180.00;
 - iv. severance pay at the rate of thirty (30) days for every completed year of service in the sum of Kshs.27,866.67;
3. The Claimant also seeks compensation for wrongful dismissal from employment.

Particulars of claim

4. That the Claimant was employed by the Respondent on 1st June 2012 as a restaurant supervisor at a basic salary of Kshs.16,000.00;
5. On 1st January 2013, the salary was reviewed to Kshs.17,600;
6. On 31st December 2013, the Claimant was sent home by Ms. Frida R. Madoka on allegations of misconduct.
7. The following day, the 1st January 2014, the Claimant was given a letter of termination of employment.
8. The Claimant was not paid terminal benefits upon termination. The Claimant referred the dispute to the Ministry of Labour but the same was not resolved.
9. The Claimant denies the alleged misconduct and states that the termination of employment was wrongful and unfair and claims compensation.

Determination

10. The claim is undefended and proceeded exparte.
11. In terms of the letter of appointment dated 1st June 2012, the Claimant received a gross salary and was therefore not entitled to house allowance in addition.

- 12.The claim for accrued leave days for the period January to December 2013 was substituted by the Claimant and same is awarded in the sum of Kshs.10,266.67.
- 13.Payment in lieu of one month notice is provided in the letter of appointment and the same is awarded in the sum of Kshs.17,600.00.
- 14.The claim for severance pay calculated at thirty (30) days for every completed year of service remains undefended. The same is proved and the Court awards Kshs.27,866.67 accordingly.
- 15.Equally the Court is satisfied that the Claimant was not given a notice to show cause nor was he subjected to disciplinary hearing before the termination of his employment.
- 16.The Claimant was not paid any terminal benefits upon termination of employment.
- 17.No notice period was given to him and the loss of employment was abrupt and unexpected. He suffered loss and damage and is entitled to compensation in terms of Section 49(1)(c) of the Employment Act. The Claimant had served the Respondent for one (1) year and six (6) months and lost the means of livelihood and legitimate expectation of employment. The employer also failed to provide the Claimant with a certificate of service to ease his search for a new job. This is an aggravating factor. The Court awards the Claimant six (6) months salary as compensation for the wrongful and unfair termination of employment in the sum of Kshs.105,600.
- 18.In the final analysis the Court award is as follows;
 - i. Kshs.17,600.00 in lieu of notice;
 - ii. Kshs.10,266.67 in lieu of leave days not taken;
 - iii. Kshs.27,866.67 severance pay;
 - iv. Kshs.105,600 compensation;
 - v. certificate of service.
- 19.**Total award Kshs.161,332.**
- 20.The award is payable with interest from date of this judgment till payment in full.
- 21.The Respondent is to pay the costs of the suit.

Dated and Delivered at Nairobi this 23rd day of October, 2015.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE