



REPUBLIC OF KENYA
EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO.246 OF 2015

(Before D. K. N. Marete)

MATHEW LATIEMA.....CLAIMANT

VERSUS

RAIPLY WOODS (K) LIMITED.....RESPONDENT

JUDGMENT

This matter was originated by way of a Memorandum of Claim dated 30th september, 2015. The issues in dispute are therein cited as;

- a. Whether the claimant was unlawfully, unprocedurally and unfairly summarily dismissed from employment by the respondent;*
- b. Whether the claimant is entitled to compensation for unlawful, unprocedural and unfair termination from employment as prayed for in this memorandum of claim.*
- c. Whether the claimant is entitled to an award of certificate of service and*
- d. Who should pay costs of the suit.*

The respondent filed a Memorandum of Appearance dated 23rd November, 2015 on the same date but has nonetheless not filed any defence despite service of the claim vide Notice of Summons dated 1st October, 2015 on the 10th instant. This cause is therefore not defended.

The claimant's case is that on or about the 2nd August, 2002, he was employed by the respondent as a machine operator at the respondent's Eldoret factory at a salary of Kshs.10,833.00. He served with loyalty, diligence, full dedication and commitment until 6th October, 2012 when he was wrongfully and unlawfully terminated from service. The respondent neglected and refused to pay his full terminal benefits.

The claimant's further case is that his termination of employment by the respondent was unfair, unprocedural and unlawful and grounded on allegations of absconding duty. He denies this and submits that he had orally sought permission from his supervisor to attend to his failing health at Huruma District Hospital and this permission was granted and adduces per annexure 11 – a patient treatment card as evidence of the malady.

He claims;

i. One month pay lieu of Notice

Basic + house allowance Kshs.12,490/=

ii. Pending salary of 6 days of October, 2012

6 x 10833/30 days Kshs. 2166.6/=

iii. Leave of year 2012

Basic salary Kshs. 12,490/=

iv. Severance pay

15 days x yrs worked x basic /30 days

15 days x 10 yrs x 10833/30 days Kshs. 54,165/=

v. Compensation for unfair termination

Gross pay x 12 months

12576 x12 months Kshs.149,880

TOTAL CLAIM Kshs. 231,191.6/=

He in the penultimate prays for;

a. Declaration that the claimant's services were unprocedurally, unlawfully and unfairly terminated.

b. Kshs. 231,191.6/=.

c. Certificate of Service.

d. Cost of this suit and interest at court rates from the time of filing the suit until payment in full and,

e. Any other further and better relief the Honourable Court may deem just and fit to grant.

The issues for determination in this cause therefore are;

1. Whether the termination of the employment of the claimant was wrongful, unfair and unlawful in the circumstances.

2. Whether the claimant is entitled to the relief sought.

3. Whether the claimant is entitled to the costs of the cause.

The 1st issue for determination is whether the termination of the employment of the claimant was wrongful, unfair and unlawful. The claimant in his claim enlists a case of wrongful, unfair, unprocedural and unlawful termination of employment. When the matter came for hearing on 23rd November, 2015,

he testified in reiteration of the claim. This was not in any manner challenged or contradicted by the respondent. She did not file a defence or at any one time attend court, or at all. The only document filed by the defence was a Memorandum of Appearance dated 23rd November, 2015. That is all. This is astonishing. I, in the circumstances find a case of wrongful, unfair and unlawful termination of the claimants' employment by the respondent.

The 2nd issue for determination is whether the claimant is entitled to the relief sought. Having established a case of unlawful termination entitles the claimant to relief.

The 3rd issue for determination is whether the claimant is entitled to the costs of the cause. The circumstances of the case dictate a case for costs. This is because the claimant was terminated, or seems to have been without cause or hearing. This is also complemented by a demand notice made by the claimant to the respondent before the onset of the suit.

I therefore allow the claim and order relief as follows;

i. A declaration do issue to the extent that the termination of the claimants services were unprocedural, unlawful and unfair.

ii. One month pay lieu of Notice

Basic + house allowance	Kshs. 12,490.00
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iii. Pending salary of 6 days of October, 2012

6 x 10833/30 days	Kshs. 2,166.60
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iv Leave of year 2012

Basic salary	Kshs. 12,490.00
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v. 8 months compensation

12376 x 8 months	Kshs. 99,008.00
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TOTAL OF CLAIM	Kshs. 126,154.60
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vi. That the respondent be and is hereby ordered to issue a certificate of service to the claimant.

vii. That the costs of this cause shall be borne by the respondent.

Delivered, dated and signed this 30th day of November 2015.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Kirwa instructed by Mwakio, Kirwa & Company Advocates for the Claimant.
2. M/s Nyairo & Company Advocates on record for the respondent.