



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 1206 OF 2012

BETWEEN

MORPHAT MUTUNE MALUNI
CLAIMANT

VERSUS

PESTLAB LIMITED.....
RESPONDENT

Rika J

CC. Leah Muthaka

Mr. Makau instructed by J.A. Makau & Company Advocates for the Claimant

No appearance for the Respondent

ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

AWARD

1. The Claimant filed his Statement of Claim on 17th July 2012. The Respondent did not enter an appearance, file any Response or attend Court at the hearing on 12th June 2013. The Claimant gave evidence *ex parte*, and closed his case on this date. The Award was to be read on 23rd July 2013, but for some unclear reason, was not ready for delivery on the 23rd July 2013. The Court takes the opportunity to apologize to the Claimant for the delay in bringing the matter to closure.

2. He testified he worked for the Respondent, as its General Manager, Sales and Marketing, at a basic salary of Kshs. 80,000 per month. He was employed with effect from 10th April 2012. He worked up to 4th June 2012 when the Respondent terminated his contract of employment. There was no notice or warning. Termination became effective on the date the letter of termination issued. The Respondent alleged the Claimant failed to achieve his targets as per the contract. The Claimant testified he was not paid salary for the month of May 2012, which he claims at Kshs. 80,000. He claims notice pay the equivalent of one month salary at Kshs. 80,000. He also prays for compensation for unfair termination, the quantum which he has left to the discretion of the Court.

The Court Finds and Awards:-

3. The Claimant was employed by the Respondent for about two months, starting 10th April 2012 and ending 4th June 2012. He was employed as Respondent's General Manager, in charge of Sales and Marketing. His salary was Kshs. 80,000 per month.

4. He claims he was not paid his salary for May 2012, amounting to Kshs. 80,000. In the termination letter, the Respondent alleged to have enclosed the cheque for the May salary. The details of the cheque were not given in the letter of termination. The Claimant in his demand letter before the filing of the Claim denied there was any enclosed cheque. There is nothing on the record to suggest that the Respondent supplied the Claimant with the details of the enclosed cheque, and the denial by the Claimant that he received the salary seems to the Court credible. The Court finds the salary of May 2012 was not paid to the Claimant. The claim for that salary at Kshs. 80,000 is allowed.

5. The claim for notice pay is merited, but the wrong amount pleaded. The Claimant was on probation, and according to his demand letter of 13th June 2012, he would receive notice of seven days, or the equivalent pay, on termination of his contract by the Respondent during probation. In the demand letter, he correctly sought seven days' salary at Kshs. 21,540 in notice pay. It was not made clear to the Court by the Claimant why he opted to claim the full months' salary as notice, in his pleadings and testimony. Notice pay is allowed at Kshs. 21,540.

6. Being an employee who exited while on probation, the Claimant would not qualify for grant of compensation for unfair termination under the Employment Act 2007. Section 42 of the Act, removes the application of section 41 from termination of probationary contracts. As there is no obligation to hear the probationary employee, or give him or her the procedural guarantees under Section 41 before termination, it would seem there is likewise no obligation placed upon on the employer under Sections 43 and 45 of the Employment Act to justify termination, give reasons, or follow the rules of fairness, justice and equity as demanded for under regular termination. The termination of probationary contract is strictly governed by the terms and conditions specific to such contract. The claim for compensation is not sustainable. In sum-

[a] The Respondent shall pay to the Claimant salary for May 2012, and 7 days' salary in notice pay-total Kshs. 101,540 within 30 days of the delivery of this Award.

[b] No order on the costs.

Dated and delivered at Nairobi this 17th day of January 2014

James Rika

Judge