



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NO. 201 OF 2013

JUSTINE NYAMBUCLAIMANT

VERSUS

JASPA LOGISTICRESPONDENT

J U D G M E N T

This is a claim prompted by the unfair termination of employment and non payment of terminal dues amounting to ksh.585,741.70 to the claimant. The respondent did not file any defence and as such the suit was heard exparte on 28/11/2013.

CLAIMANTS CASE

The claimant confirmed that he was employed on 16/4/2009 by a letter produced as exhibit JN1 as Operations Manager. He worked until 3/5/2013 when he was terminated while serving as the Branch Manager. His salary was ksh.35,000 per month according to the payslip produced as Exhibit JN2. According to him the termination was unfair because it was done without being accorded any hearing. His uncontested evidence is that he received a phone call from his boss in Nairobi asking him to go to the Head Office. He complied by travelling by night bus and on arrival he was given a termination letter without any hearing or prior notice.

He was also not paid the salary for May 2013 and other accrued benefits. The office car was also repossessed although from May 2012 to May 2013 he was being deducted ksh.5000 per month so that at one point the car would become his. According to him he had accrued 42 leave days. He prayed for:

- a. **one month salary in lieu of notice35,000**
- b. **42 leave days 56,538**
- c. **transport allowance 15,000**
- d. **salary for March to May105,000**
- e. **service pay at 15 day per month 70,000**
- f. **refund of 5000X12 months 60,000**
- g. **interest on 60,000..... 23,703**
- h. **12 months salary for unfair termination.....240,000**

573,741.70

After the close of the hearing the claimant filed written submission which I have considered carefully.

ANALYSIS AND DETERMINATION

The issues for determination arising from the pleadings, evidence and submissions are:

- 1. whether the termination of the claimant's employment was unfair**
- 2. whether the reliefs sought ought to issue**

unfair termination

Termination is rendered unfair when it is done in breach of procedural fairness as prescribed by a statute. In Kenya Section 45 bars employers from dismissing the employees services except for a valid reason and upon fair process. In this case, the reason for termination according to the letter dated 3/5/2013 is redundancy. In Kenya the procedure for declaring employees redundant is governed by section 40 of the Employment Act.

The said provision requires that a notice of one month should be served in writing to the labour officer and the employee. No such notice was given and as such the alleged lay off became unfair termination within the meaning of Section 45 of the Employment Act. In this court's opinion, Section 40 of the Act provides a mandatory statutory procedure breach of which opens employers to obvious liability under Section 49 of the Employment Act.

The reliefs available

In view of the foregoing finding, the claimant is awarded ksh.35000 being one month salary in lieu of notice, ksh.49000 being 42 leave days, kshs. 73,500 being salary for March, April and May 2013, refund of ksh.60,000 deducted in respect of motor vehicle KBM 848Y and ksh.240,000 being 12 months gross salary compensation for unfair termination. The court notes that the amount prayed for compensation is less than expected and blames the counsel for negligence which made to the claimant's loss of ksh.180,000/.

The claim for severance pay fails in favour of the claim for unfair termination otherwise it would lead to double benefit to the claimant. The above sum will accrue interest from 3/5/2013. The claimant will also have certificate of service.

DISPOSITION

Judgment is entered for the claimant against the respondent for:

- 1. the sum of ksh.457,500 plus interest at courts rate from 3/5/2013.**
- 2. costs and interest.**
- 3. Certificate of service.**

Orders accordingly.

Signed, dated and delivered this 28th day of February 2014

O.N. Makau

Judge