



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 894 OF 2012

JOHN MACHARIA NYOIKE CLAIMANT

VERSUS

THIKA COFFEE MILLS LIMITED RESPONDENT

Mr. Odongo for Claimant

M/s Hilda Kamau for Respondent

JUDGMENT

1. Claimant was employed by the Respondent on 6th March and worked continuously for 16 years until termination of his employment on 23rd January 2012.

2. The letter of termination states:

“The management has reviewed your job performance and wish to inform you that your services are no longer required.”

3. The Claimant worked as an Artisan and earned a monthly salary of Kshs.21,762/= at the time of termination. The Claimant’s job performance was not reviewed nor was he prior to the termination warned that his performance was not good and / or was wanting.

The claimant states that the termination was unlawful and unfair within the meaning of Section 43 as read with Section 45 of the Employment Act.

4. The Claimant was not paid any terminal benefits upon termination and claims:

- i. Unpaid salary for the period 1st to 23rd January 2012 in the sum of Kshs. 16,146/=;
- ii. Unpaid leave days in the sum of Kshs. 21,762/=;
- iii. Leave travel allowance in the sum of Kshs.2,400/=;
- iv. One month salary in lieu of notice in the sum of Kshs. 21,762 and
- v. Maximum compensation in terms of **Section 49(1)(c)** of the **Employment Act** in the sum of Kshs.201,144/=.

The Claimant also prays for costs of the suit and interest and provision of certificate of service.

No valid reason has been provided for the dismissal of the Claimant.

Statement of Response

5. The Respondent in its Statement of Response dated 19th November 2012 does not provide the reason for the termination of the employment of the Claimant but only makes a bare denial that the termination was not unlawful and was done in accordance with a fair procedure.

6. The Respondent further did not tender any oral or documentary evidence to justify the dismissal of the Claimant after serving the Respondent for 16 years.

7. The Claimant testified in support of his case and confirmed the particulars of claim contained in the memorandum of claim. The same remains largely uncontroverted and the Claimant has on a balance of probability proved that the dismissal was not for a valid reason and was not done in terms of a fair procedure in contravention of **Sections 41, 43 and 45 of the Employment Act, 2007.**

8. Accordingly, the Court upholds the claim and grants the Claimant as follows:

- i. unpaid salary for the period 1st to 23rd January 2012 in the sum Kshs.16,146/=;
- ii. payment in lieu of leave in the sum of Kshs.21,762/=;
- iii. one (1) month salary in lieu of leave in the sum of Kshs.21,762/=.

9. Due to the long service the Claimant had given the respondent. Taking into consideration the inconsiderate manner in which the dismissal was effected, without notice, without payment of any terminal benefits, without payment of any gratuity or any long service benefit and without any due process being followed, the Court awards the Claimant ten (10) months salary as compensation for the unlawful and unfair dismissal in the sum of Kshs.217,620/=.

10. Total award to the Claimant is Kshs.277,290/=.

The award is payable with interest at Court rates from the date of judgment to payment in full.

The Respondent is also to pay the costs of this suit.

Dated and Delivered at Nairobi this 30th day of May, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE