



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 955 OF 2012

HUDSON HABWE MUNAI 1ST CLAIMANT

FRANKLIN OCHIENG OJIRO 2ND CLAIMANT

VERSUS

REDINGTON KENYA LIMITED 1ST RESPONDENT

DELAAN CONSULTING & PROJECTS LTD.....2ND RESPONDENT

Claimants in person

M/S Makori for 1st Respondent

Mr. Okonjo for 2nd Respondent

JUDGMENT

1. The suit was filed via a memorandum of claim dated 25th May, 2012 on 5th June 2012.
2. The 1st and 2nd Claimants have sued Redington Kenya Limited who they allege was their employer.
3. Mr. Hudson Habwe Munai, the 1st Claimant alleges he was employed in October 2008 as a loader at a monthly salary of Kshs.10,000/=. The 2nd Claimant Mr. Frankline Ochieng Ojiro alleges the Respondent employed him as a driver in April 2011 at a monthly salary of Kshs.13,000/=.
4. That the two served the Respondent with respect, loyalty and diligence until 15th February 2012 when the Respondent wrongfully and unlawfully terminated their services without notice and refused to pay them their terminal benefits as follows:

1st Claimant

- a. one (1) month salary in lieu of notice in the sum of Kshs.10,000/=;
- b. salary arrears (February) Kshs.10,000/=;

- c. leave not taken, Kshs.10,000/=;
- d. house allowance at 15% of the salary Kshs.54,000/=;
- e. severance pay for three (3) years Kshs.15,000/=;
- f. unremitted NSSF for 8 months Kshs.1,600/= and
- g. unremitted NHIF deductions for 40 months Kshs.8,800/=.

Total Kshs.109,400/=.

2nd Claimant

- a. one (1) month salary in lieu of notice, Kshs.13,000/=;
- b. salary arrears for February 2012, Kshs.13,000/=;
- c. leave not taken Kshs.13,000/=;
- d. house allowance at 15% for 11 months Kshs.21,450/=;
- e. unremitted NSSF deductions for 11 months Ksh.2,200/=;
- f. unremitted NHIF deductions for 11 months Kshs.3,080/=.

Total Kshs.65,730/=.

5. The two Claimants also claim 12 months salary being compensation for unlawful dismissal.
6. In the amended memorandum of claim dated 25th June 2013, and filed on 26th June 2013, the Claimant with leave of Court introduced Delaan Consulting & Projects Ltd. as the 2nd Respondent.
7. The Claimant allege that whilst they worked for the 1st Respondent their pay-slips started to read the name of the 2nd Respondent and were not aware of the circumstances leading to the change. The two averred that they assumed, as they were entitled to do that they remained in the employment of the 1st Respondent. They thus hold the 1st and 2nd Respondents jointly and severally liable to pay their terminal dues.
8. The pay-slips produced in Court for the period December 2011 to January 2012 show that Redington was the employer of the two Claimants.
9. However the NSSF statement for the 1st Claimant for the period 1st October 2008 to 17th February 2012 indicate the name of the employer to be Delaan Consulting and Project Ltd., the 2nd Respondent.
10. The further statement up to 22nd May 2012 shows the same employer. The statement reflects the gaps in the remission of NSSF dues as claimed. The dispute was referred to the Ministry of Labour for conciliation and same was not resolved.

Respondent's Reply

11. The Respondent filed a memorandum of Reply on the same date. No amended Reply was filed after the amendments made to the memorandum of claim. However written submissions were filed by the Advocates for the 1st and 2nd Respondents.

12. In the memorandum of Reply, Redington Kenya Ltd., denied that it employed the Claimants at all. However, the Respondent went on to defend the substantive claims denying that the 1st Claimant's monthly salary was Kshs.10,000/= nor the 2nd Claimant's salary was Kshs.13,000/=.

13. It is also denied that the Claimants were entitled to notice or a salary in lieu thereof. Respondent also denies that the Claimants are entitled to severance pay as claimed.

Testimony

14. The Respondent did not call any witnesses in support of the Respondent's case. The 1st and 2nd Claimants however testified on oath in support of the particulars of claim. The totality of their evidence largely supported the particulars of claim as follows:

15. That the 1st Claimant worked between 2008 to 2012 as a loader. He packed goods in the Respondent's three (3) motor vehicles (station wagons) until on 15/2/2012, when he reported work early in the morning. Upon loading the vehicle, himself and the 2nd Claimant were told to wait and were both accused of stealing from the company. His phone was confiscated when he denied he was involved in theft.

16. The 2nd Claimant was also called in. They both recorded statements at Parklands Police Station at 5 p.m. in the evening. Both were not charged with any offence but were both dismissed from work. They reported the case to Kituo Cha Sheria and Ministry of Labour who wrote to the Respondent but the Respondent did not respond to the letters. He told the Court that he was not given leave for four (4) years though he has claimed one year. He was not paid house allowance at 15% of his basic salary though he had been promised payment. He also found out that not all NSSF and NHIF deductions were remitted by the Respondent. He claims the refund accordingly. He did not get a letter of appointment.

17. The witness was thoroughly cross examined but he remained candid and consistent in his testimony. He insisted that the Kshs.10,000/= was not inclusive of house allowance. He had been asked to wait for payment later. He reported the issue of House allowance to the Ministry of Labour though this was not reflected in the letters from the Human Rights Commission and Ministry of Labour. He said that his employer was the 1st Respondent though it was said that both companies were owned by his Indian Employer.

18. That initially they had not pay-slips but same were introduced later. He states that the dismissal was unlawful and unfair as it was based on false accusations. He did not know what he had stolen.

19. Frankline Ochieng Ojiro, the 2nd Claimant corroborated the evidence of the 1st Claimant in all material respects. He was a driver of a Fielder Station Wagon. He delivered office machines; laptops and printers. He was employed in August 2011 though he did not get an appointment letter. He worked till February 2012 and was dismissed in similar circumstances as the 1st Claimant. He earned Kshs.13,000/= per month. He was accused of delivering a laptop at Westgate that had a defective screen. It was alleged that himself and the 1st Claimant had changed the screen. He said neither himself nor the 1st Claimant had capacity to remove and exchange a laptop screen. This is why they were not charged by the police but the employer went ahead to dismiss them from work without payment of any benefits.

20. The 2nd Claimant remained candid and consistent in his testimony and the Court believes his testimony. His evidence is also consistent with that of the 1st Claimant.

21. They claim 15 days salary for the month of February and one month salary in lieu of 1 year leave. He also claims 15% of his basic salary as house allowance.

Determination

22. The 1st and 2nd Claimants have in their testimony supported the particulars of claim and have proved the same on a balance of probabilities.

23. The Respondents failed to adduce any evidence in rebuttal and therefore terminal benefits claimed are owed to the Claimants and the Court awards as follows as against the 1st and 2nd Respondents jointly and severally;

1st Claimant

- a. one (1) month salary in lieu of notice in the sum of Kshs.10,000/=;
- b. fifteen (15) days salary for the month of February in the sum of Kshs.5,000/=;
- c. payment in lieu of one (1) year leave in the sum of Kshs.10,000/=;
- d. 15% house allowance for three (3) years in the sum of Kshs.54,000/=;
- e. service gratuity for three (3) years in the sum of Kshs.15,000/=;
- f. refund of unremitted NHIF in the sum of Kshs.8,800/=.

Total award Kshs.104,400/=.

2nd Claimant

- a. one (1) month salary in lieu of notice in the sum of Kshs.13,000/=;
- b. fifteen (15) days salary for the month of February Kshs.7,500/=;
- c. payment in lieu of one (1) year leave in the sum of Kshs.13,000/=;
- d. house allowance for Eleven (11) months at 15% in the sum of Kshs.21,450/=;
- e. unremitted NSSF deductions in the sum of Kshs.2,200/=;
- f. unremitted NHIF deductions in the sum of Kshs.3,080/=.

Total Kshs,58,230/=.

Compensation

24. The Claimants have discharged their onus in terms of **Section 47(5)** of the **Employment Act, 2007**, to show that the dismissal was unlawful and in terms of unfair procedure.

25. The Respondents failed to rebut the evidence adduced and the Court finds that the dismissal of the 1st and 2nd claimants was in violation of **Section 45(1) and (2)(a) and (c)** of the **Employment Act**, in that it was not for a valid reason and was done in terms of unfair procedure.

26. The Court awards the 1st Claimant 5 months salary in the sum of Kshs.50,000/= for the dismissal as he had served for three (3) years whereas the 2nd Claimant is awarded two months salary in the sum of Kshs.23,000/= as he had served for 11 months only.

27. The Respondents are also directed to provide the two Claimants Certificates of Service within 30 days from the date of this judgment.

Total awards for:

1st Claimant Kshs.154,400/=;

2nd Claimant Kshs.81,230/=.

The Respondents are also to pay the costs of the suit.

Dated and Delivered at Nairobi this 16th day of May, 2014

MATHEWS N. NDUMA

PRINCIPAL JUDGE