



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 816 OF 2013

DAVID KAMANDE KIMANICLAIMANT

VERSUS

GENERAL ALLUMINIUM FABRICATORSRESPONDENT

JUDGMENT

The Claimant herein David Kamande Kimani sued the Respondent General Alluminium Fabricators Ltd for unlawful termination of employment. In the Memorandum of Claim dated 20th May 2013 and filed in court on 7th June 2013 the Claimant alleges that he was employed by the Respondent on 29th August 1990 as an ungraded artisan and worked until he was summarily dismissed from employment on 14th April 2008. He was accused of stealing scrap metal in collaboration with other employees.

He denied stealing as alleged and annexed a copy of a letter dated 26th April 2008 from Officer in Charge, Embakasi Police Station advising the Respondent to reinstate him pending investigation of the case. He alleges he was dismissed inspite of the letter from the police. His dismissal letter dated 14th April 2008 states that he was “summarily dismissed until a decision has been made from the Court of law.”

The Claimant prays for the following orders: -

- a. The Claimants dismissal be declared wrongful and unfair.
- b. The Claimant be paid his terminal dues as set out in Paragraph 10 of the Claim.
- c. The Respondent be ordered to compensate the Claimant for wrongful dismissal at the equivalent of twelve (12) months gross salary.
- d. The Honourable Court do issue such orders and give such directions as it may deem fit to meet the ends of justice.
- e. The Respondent do pay the costs of this claim
- f. Interest on the above at Court rates.

The Respondent did not file appearance or response to the Claim. The case came up for hearing on 27th May 2014.

Having confirmed that the Respondent was served with both summons and hearing notice based on the affidavits of service on record and copies of both summons and hearing notice filed in court I allowed the Claimant to proceed with his case in the absence of the Respondent.

The Claimant reiterated the averments in the Memorandum of Claim and prayed for 3 months’ notice, gratuity for 22 years and 14 days worked in April 2008. The Claimant testified that his last salary was

Shs. 10,947.

A copy of his payslip for March 2008 was attached to the Memorandum of Claim.

I have considered the averments in the Memorandum of Claim and the testimony of the Claimant which in the absence of evidence to the contrary is uncontroverted.

I therefore enter judgment in favour of the Claimant against the Respondent as prayed in the sum of Shs. 158,248.00 being 3 months' salary in lieu of notice in the sum of Kshs. 32,831/-, Shs. 5,108.60 being salary for 14 days worked in April 2008 and Shs. 120,417/- being gratuity at 15 days salary per completed year of service.

I have however not granted the Claimant the sum of Shs. 131,364/- on account of 12 months' salary as compensation for unfair termination which is based on Section 49(1) (c) of the Employment Act 2007 as the Act was not in operation at the time of claimant's dismissal, having come in force on 2nd June 2008.

The Respondent will also pay Claimant's costs of the case.

Orders accordingly.

Delivered and signed in open court on 30th July, 2014

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

In the presence of:

Muhindi holding brief for Gatumuta for Claimant

No appearance for Respondent