



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 944 OF 2013

URBANUS KIOKO WAMBUA CLAIMANT

VERSUS

PEMINJO LIMITED RESPONDENT

Claimant in person

Mr Kiunga for Respondent

JUDGMENT

1. By a memorandum of Claim dated 20th June 2013 and filed on the same date, the Claimant claims terminal benefits to wit;

- (i) one (1) month salary in lieu of notice in the sum of Kshs.16,000/=;
- ii. severance pay for one (1) year and eight (8) months in the sum of Kshs.13,333.33.
- iii. house allowance in the sum of Kshs.4,000/=; and
- iv. payment for rest days not granted in the sum of Kshs.400,000/=;

In addition, the Claimant claims compensation for wrongful and unlawful termination.

2. The Claimant testified in support of his case and the fact of the case may be summarized as follows:-

That he was employed by the Respondent as a driver on 27th August 2011 earning a monthly salary of Kshs.16,000/=. He was not given a letter of appointment. He worked continuously until the 1st May 2013 when upon reporting to work in the morning the Director of the Respondent **Mr. Muranga** told him there was no more work. He was not given any reason for the termination. He was paid for days worked and no more.

3. The Claimant was not registered with NSSF and NHIF and did not have a pension scheme.

That he had served the Respondent honestly and diligently for a period of one year and eight months.

4. That he has made a demand to be paid as claimed in this suit but the Respondent has failed

to make good the claim.

5. The Respondent filed a statement of defence dated 9th July 2013 in which it denies that it ever employed the Claimant at all and the particulars of claim set out in the memorandum of claim.

6. The Claimant joined issues with the Respondent in its reply to the defence dated 20th August 2013 and filed on 22nd August 2013.

7. The Respondent did not adduce any evidence in support of the defence case as it did not call any witness nor produce any documentation at all. The Respondent also opted not to file any final submissions in this matter.

8. The Claimant's case therefore remains largely uncontroverted because the statement of defence amounts to bald denial without any specifics on the particulars of claim.

Determination

9. The Court finds that the Claimant was employed by the Respondent as a driver for a period of one year and 8 months and his employment was terminated without giving any reason. The Claimant was not given any opportunity to explain why his employment should not be terminated.

10. The said termination was in violation of **Sections 41, 43 and 45** of the **Employment Act** as it was not for a valid reason and was not done in terms of a fair procedure.

11. The Claimant worked for seven (7) days a week and was given two off days a month. He reported to work at 8 p.m. in the evening until 7 a.m. in the morning. His work was to take home staff on night duty at different hotels and back. He was entitled to four (4) off days a month hence claims two off days per month for eighteen (18) months which the Court calculates at Kshs.21,000/= in the period of eighteen (18) months.

12. He produced staff I/D No. 20180698 to refute the allegations under cross examination by counsel for the Respondent that he was never employed by the Respondent as alleged or at all.

He named the number plates of the various vans he drove during the period of employment.

13. The Court finds that the Claimant had sufficiently proved that he was an employee of the Respondent and his employment was terminated as described in this judgment.

Accordingly, the Court awards the Claimant as against the Respondent as follows;

- i. Kshs.16,000/= being payment in lieu of one (1) month notice;
- ii. Kshs.13,337.37 being severance pay;
- iii. Kshs.4,000 being House allowance not paid at 15% of the basic salary; and
- iv. Kshs.21,000 for two rest days per month for eighteen (18) months;

Total Kshs.54,000/=.

Further, the Respondent is to provide the Claimant with a certificate of service.

The Award is to be paid with interest at Court rates from date of this Judgment to payment in full.

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

Dated and Delivered at Nairobi this 25th day of July, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE