



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT NAIROBI

CAUSE NUMBER 462 OF 2012

BETWEEN

PETER BARONGO NYAMWEYACLAIMANT

VERSUS

PETER BURUGURESPONDENT

Rika J

CC. Edward Kidemi

The Claimant Joel Barongo Nyamweya present in person

R.M. Njiraini & Company Advocates for the Respondent

ISSUE IN DISPUTE: UNLAWFUL AND UNFAIR TERMINATION

AWARD

1. The Claimant filed his Statement of Claim on 21st March 2012. The Respondent filed a Memorandum of Appearance on 7th May 2012. There was nothing filed by the Respondent subsequently in response to the Claim. The Respondent asked for and was granted adjournment of the hearing of the dispute on various dates, and also sought time to file his Response, was allowed extension of time, but eventually did not file any Response. Finally the Claimant scheduled the dispute for hearing on 23rd July 2014, duly notified the Respondent's Advocates, but there was no attendance on the part of the Respondent when the dispute was heard and closed, on the 23rd July 2014. The delivery of the Award was reserved for 17th October 2014, but brought forward, on the ground that the undersigned Trial Judge has been transferred to Mombasa.

2. Mr. Nyamweya testified he was employed by Mr. Burugu on or around 25th November 2008, as a Gardener. He worked at the Respondent's residence. He also doubled up as the Security Guard. He earned Kshs. 9,000 per month. He worked until 4th September 2011 when the Respondent terminated his contract of employment without any warning, notice or reason. The Respondent sent the Claimant away empty handed. Nyamweya seeks the following Orders:-

- a. 1 month salary in lieu of notice at Kshs. 9,000.
- b. Service pay at 15 days' salary for 3 years at Kshs. 13,500.

- c. Leave pay for the period worked at Kshs. 18,900.
- d. 12 months' salary for unfair and unlawful termination at Kshs. 108,000.
- e. Costs, Interest and any other relief the Court may deem fit to grant.

The Claimant testified he was not given a letter of appointment, and termination was through the word of mouth. He sought the assistance of Kituo Cha Sheria [Centre for Legal Empowerment] who wrote a demand letter to Burugu. The Respondent ignored the demand letter.

The Court Finds and Awards:-

3. The pleadings and the evidence of the Claimant are without challenge. The Respondent as shown in a succession of affidavits was served, entered appearance, but filed no Response and opted to avoid the Court at the hearing.

4. The Claimant has adequately shown that he was employed as a Gardner-cum-Security Guard, on 25th November 2008. He earned a monthly salary of Kshs. 9,000. The Respondent terminated his contract of employment on 4th September 2011. There were no reasons given for the decision. The Respondent did not show valid and fair reasons for his decision, and did not carry out the decision in accordance with the minimum statutory disciplinary procedure. Sections 41, 43 and 45 of the Employment Act 2007, were completely ignored. IT IS ORDERED:-

- a. ***Termination of the Claimant's contract of employment was unfair.***
- b. ***The Respondent shall, within 30 days of the delivery of this Award pay to the Claimant 12 months' salary in compensation at Kshs. 108,000; 1 month salary in lieu of notice at Kshs. 9,000; annual leave pay of 63 days amounting to Kshs. 21,807; and service pay at 15 days' salary for 2 years completed in service at Kshs. 10,384- total Kshs. 149,191.***
- c. ***No order on the costs and interest.***

Dated at delivered at Nairobi this 18th day of September 2014

James Rika

Judge