



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT
AT MOMBASA
CAUSE NUMBER 423 OF 2013
BETWEEN
PHILIP OLOUCH RASARE.....CLAIMANT
VERSUS
MOMBASA APPAREL EPZ UNIT 2.....RESPONDENT
Rika J
Court Assistant: Benjamin Kombe
Ms. Mutuku holding brief for Ms. Omollo for the Claimant
Mr. Makokha for the Respondent

AWARD

1. Mr. Phillip Oluoch Rasare was employed by the Respondent as a Mass Production Machinist, at Mombasa. His salary was Kshs.12,822 per month.
2. His contract commenced on 19th July 2013, to end on 15th October 2013.
3. The Claimant left employment on 8th October 2013. The circumstances of his departure are contested.
4. The Claimant states he was forced to go on leave of 3 days on this date by the Respondent. On returning by the end of the 3 days, on 11th October 2013, he was advised by his Supervisor that his services were no longer required.
5. Mr. Rasare filed is Claim on 25th April 2014 in which he argues that his contract of employment was unfairly and unlawfully terminated. He seeks:
 - a) Salary for 14 days worked in October 2013, at Kshs.5,684.
 - b) Unpaid salary at Kshs.1,784
 - c) 3 months' salary in lieu of notice for unfair termination at Kshs.36,258.

Total: Kshs.43,726.

6. He testified on 16th October 2014.

7. The Respondent filed its Statement of Response on 25th April 2014. Its Human Resource Officer Mr. Eric Nyabuya Barare testified on behalf of the Respondent on 16th October 2014 when the hearing closed.

8. The Respondent concedes the prayers for 14 days' salary for work done by the Claimant in October 2013, and the unpaid salary arrears. It is opposed to the Prayer for 3 months' notice pay.

9. Mr. Barare explained that one, the contract between the Parties provided for 1 month notice on termination, or 1 month salary in lieu of such notice. Two, the Claimant's contract was not terminated prematurely by the Respondent; the Claimant left employment voluntarily on 8th October 2013. He is not entitled to any form of notice pay.

The Court Finds and Awards:-

10. The prayers for days worked, and arrears of salary are not contested. ***The Respondent shall pay to the Claimant salary for the 14 days worked in October 2013 at Kshs.5,684 and arrears of salary at Kshs.1,784.***

11. The Claimant was unable to show that termination of his contract of employment was instigated by the Respondent.

12. At paragraph 5 of the Statement of Claim, he states he applied for unpaid leave on 8th October 2013 to last up to 10th October 2013. In his Advocates' letter of demand before institution of the Claim, this is the same position given by the Claimant.

13. He therefore did his credibility no good at all, when in his evidence, he maintained that he was forced by the Respondent to go on leave on 8th October 2013 for 3 days.

14. The evidence of Mr. Barare is believable. The Claimant protested operating under a new stitching style; asked to go on unpaid leave of 3 days on 8th October 2013 to cool off; and did not show up at the workplace until 16th October 2013, when his contract had already expired. Expiry was on 15th October 2013. ***He is not entitled to notice pay or any form of compensation for unfair termination.*** In his prayers, he appears to mix up notice pay and compensation. Either way, he does not deserve the assistance of the Court, having walked out on his contract, which was about 1 week away from expiry.

IT IS ORDERED:-

(a) The Respondent shall, within 14 days of the delivery of this Award, pay to the Claimant a total of Kshs.7,684, for days worked in October 2013, and for arrears of salary, in full and final satisfaction of the Claim.

(b) No order on the costs and interest.

Dated and Delivered at Mombasa this 24th day of October 2014.

James Rika

Judge