



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 146 OF 2013

(Formerly Cause No.598 of 2011at Nairobi)

SILVANUS ANYANGA.....CLAIMANT

-VERSUS-

BINA WHOLESALERS LIMITED..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 17th October, 2014)

JUDGMENT

The memorandum of claim was filed on 20.04.2011 through Gordon Ogola & Associates. The claimant prayed for judgment against the respondent for one month pay in lieu of the termination notice; pay for normal overtime; pay for rest days or Sundays; underpayments of salary; compensation for unfair termination all amounting to Kshs.185, 905.00; certificate of service; costs of the suit; and any other relief the honourable court may deem fit to grant the claimant.

The respondent's statement of defence dated 6.05.2011 was filed through Tariq Khan & Advocates. The respondent prayed that the claimant's suit be dismissed or struck out with costs.

The case came up for hearing on 16.07.2014 when the respondent did not attend court and the claimant and claimant's counsel were present. The claimant opted to rely on the pleadings, documents on record and the final submissions to be filed. The respondent consistently failed to attend court at the hearing and thereafter.

The court has considered the material on record. The main issues for determination are as follows:

1. Whether the termination was unfair.
2. Whether the claimant was employed as a shop assistant or a general worker.
3. Whether the claimant is entitled to the remedies as prayed for.

The court has perused all the material on record and finds that there is no evidence on record to enable the court to resolve the issues for determination one way or the other. For instance, it is submitted that the claimant was terminated on 18.02.2009 when the director's son told the claimant there was no work for the claimant to continue in employment. Such submission hangs in a vacuum for want of evidence. Underpayment is pegged on whether the claimant was employed as a shop assistant or a general worker but which issue remains unresolved for want of evidence. Claims about overtime would also require evidence but which is not on record. Nevertheless the court finds that the claimant is entitled to a

certificate of service because the employment relationship was not in dispute.

In conclusion, judgment is entered and the suit is determined with orders:

- a. That the respondent to deliver the certificate of service by 1.12.2014.
- b. That each party will bear own costs of the suit.

Signed, dated and delivered in court at **Nakuru** this **Friday, 17th October, 2014.**

BYRAM ONGAYA

JUDGE