



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NO. 201 OF 2014

MOSES KHAEMBACLAIMANT

VERSUS

BOOLMAT E.A. CO. LTDRESPONDENT

J U D G M E N T

1. The claimant brought this suit against the respondent on 8/4/2014 claiming accrued employment benefits plus compensation for unfair termination totalling to Ksh.378,997. He also sought certificate of service plus costs of the suit.
2. The respondent did not file defence and the suit proceeded ex parte by way of written submissions.
3. The claimant's case is that he was employed by the respondent as a Gardener at the respondent's crocodile farm from 1/6/2008 until 19/11/2013 when he was unlawfully and unfairly terminated. The termination was allegedly unfair because it violated the termination procedures provided for by the Employment Act including to pay claimant's dues on termination.
4. The claimant prayed for salary for September and October 2013 plus 19 days worked on November 2013 being ksh.26,333, leave days for year 2013 being ksh.10,000 leave travelling allowance of ksh.4500, house allowance for 6 year at 15% of basic salary being ksh.108,000, in house savings @ ksh.300 per month for 6 years X 2 which is ksh.34200, pending public holidays (Ksh.333x9 daysx6 years x2) being ksh.35,964, one month's pay in lieu of notice, severance pay @ 15 days for 6 years being ksh.30000 and 12 months salary for wrongful termination.
5. In view of the fact that the suit is not opposed, the court grants prayer 1 in the suit by declaring the termination of the claimant's employment by the respondent to be unfair and unlawful. In addition the court awards to the claimant one month's salary in lieu of notice (Ksh.10,000), salary for September, October 2013 and 19 days worked in November 2013 (ksh.26333), leave for 2013 of 21 days (ksh.8076.92). The prayer for refund of in house savings is granted as prayed (skh.34200). The payslips produced reflect such item at the rate of ksh.300 per month.
6. The prayer for leave travelling allowance is dismissed for lack of basis. The prayer for house allowance is also dismissed because the employment contract and payslips provided for gross pay. The prayer for public holidays worked is dismissed for lack of particulars and evidence.
7. The appointment letter produced provides for severance pay of 15 days per year of service and as such the claimant gets ksh.30,000 as prayed.

He will also get 3 months gross salary being Ksh.30,000 compensation for unfair termination. The court is of the opinion that a person serving as a gardener can secure an alternative employment within 3 months after dismissal. Finally he is granted the prayer for certificate of service plus costs and interest.

DISPOSITION

8. In conclusion, judgment is entered for the claimant for ksh.138,609.90. He will also get certificate of service plus costs and interest.

Orders accordingly.

Dated, Signed and delivered this 3rd October 2014.

O. N. Makau

Judge