



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 409 of 2011

JOHN CHOGO.....CLAIMANT

VERSUS

TRUFOOD LIMITED.....RESPONDENT

J U D G M E N T

The claimant in this suit avers that by the time of his termination he was an employee of the respondent for fourteen years having been employed in 1996. His salary as at the time of termination was Kshs.12,540.

According to his statement of claim dated 16th March, 2011 he avers that he was dismissed from his employment without any just cause and or excuse and further that the respondent failed to assign any reason for the termination. The claimant as a consequence seeks compensation for wrongful termination of employment which he has quantified at Kshs.142,120.

The Respondent as noticed from record neither filed any response to this claim despite having been served nor attended court at the trial to cross-examine the claimant. The cause therefore proceeded undefended.

At the trial only the claimant testified and his testimony was that he worked for the respondent from 15th January, 1996 to January 2012. He stated that he used to work as a supervisor for the tomato sauce line but by the time he was terminated he had been transferred to drinks line. According to him the Managing Director, a Mr. Rajan claimed he had contaminated the drinks with salt. He was however not given any written termination letter.

No employment letter detailing the claimants terms and conditions of service was produced however the matter having proceeded undefended the court will take into account the claimant's testimony as well as the supporting documents attached to his memorandum of claim.

Under section 45(1) of the Employment Act, no employee shall be unfairly terminated. The Act further provides that the burden of proving termination was unfair and unlawful rests with the claimant while the burden of proving it was justified and fair rests with the respondent.

As already noted the respondent neither filed any response to the claim nor attended court to cross-examine the claimant over the validity of his averments. The claimant's claim to have been terminated unfairly and without a reason therefore remain uncontroverted.

Employment Act entitles a claimant who has been wrongfully terminated to compensation equivalent to the length of notice he would have been given had the contract been terminated normally. In this case the

contract of employment was never produced neither was there any allegation of a longer period than the minimum monthly notice stipulated in the Act. The court will in the circumstances award the claimant one month's salary in lieu of notice as compensation for wrongful termination of employment.

Regarding claim for salary for the month of January, 2010, the claimant in his own testimony said he worked up to January, 2010. He did not say whether he was terminated at the beginning of January or at the end of it. This claim is therefore not reasonably proved and is disallowed.

Concerning claim for leave, an employee who has worked consistently for 12 months is entitled to at least 21 days of leave with pay. The claimant in his evidence did not testify whether he ever went on leave or not. Apart from the averments in the statement of claim no evidence was led to show that leave was not taken and for what reason this claim therefore also fails.

Concerning service pay, this head of compensation is only available to those employees who are not members of a pension scheme or contributors to NSSF. Going by the claimant's payslip attached to his memo of claim, he was a regular contributor to NSSF and is therefore not entitled to service pay.

Finally, having found that the claimant was unfairly terminated, The Act empowers the court to award up to 12 months wages for unfair termination.

The respondent did not respond to the claimant's claim for wrongful termination nor did it attend court to cross-examine him over the allegation. The claim therefore goes uncontested and the court hereby awards the claimant 8 months salary as reasonable compensation for wrongful termination.

In conclusion the court makes the following award:

	<u>Kshs.</u>
1. One month's salary in lieu of notice	12,540
2. 8 months salary for unfair termination	<u>100,320</u>
	112,860 =====

This award shall be subject to statutory deductions.

It is so ordered.

Dated at Nyeri this 30th day of January, 2013.

Abuodha J. N.
Judge

Delivered this 18th day of February, 2013.

**Delivered in open Court in the presence of for the Claimant and
..... for the Respondent.**

Rika
Judge