



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 348 of 2010

RONALD KAMAU.....CLAIMANT

versus

GETRIO INSURANCE BROKERS.....RESPONDENT

JUDGMENT

1. The Claimant was dismissed on 4th January 2010 and he sought recompense by suing the Respondent his former employer. He testified that the Respondent was his employer from 3rd December 1999 and that each successive year led to a promotion and congratulatory letters save for a year or so. He started off at 13,000/- a month and at the time of his dismissal he was earning 70,000/-. As he proceeded on leave, a letter was written deploring his performance. It was dated 4th January 2010 which is the same date as the dismissal letter. He had accrued leave days totalling 153. Upon the termination he was paid part of his dues which was Ksh. 250,000/-. The balance of 238,271/- remained unpaid. He was given an additional 50,000/-. The Respondent also wrote a second dismissal letter dated 25th March 2010. He therefore sought payment of 1 months salary in lieu of notice – Kshs. 70,000/-, pay for 153 leave days pending – Kshs. 510,000/-, Salary for 4 days – Kshs. 9,333.30, 12 months compensation – Kshs. 840,000/-. This Claim totalled 1,429,333.30/- less Kshs. 300,000/- already paid leaving a balance of Kshs. 1,129,333.30/-.

2. He confirmed that he received the letter of 4th January 2010 a few days after he had gone on leave on 4th January 2010.

3. Though the Respondent filed a Reply to Memorandum of Claim and Counter-Claim, there was no appearance on the date for hearing. The failure to prosecute the Counter-Claim means that its fate is sealed. It is dismissed with costs.

4. The Claimant's case was that he was unfairly terminated. No evidence was led to show that the termination of his services was merited. If indeed he was performing dismally, he ought to have had the benefit of the procedures under Section 41. Section 41 provides as follows:-

41. (1) Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his

choice present during this explanation.

(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44 (3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.

5. In this case, the Claimant was not accorded that opportunity and his termination is contrary to the provisions of the law.

6. He has proved that he earned a sum of Kshs. 70,000/- a month this was subject to statutory deductions leaving a balance of 54,608/-. He was entitled to notice if termination ensued. He was therefore entitled to payment in lieu thereof. The Claimant received payment of Kshs. 300,000/- This formed part of the Claimant's claim. He was entitled to payment for the leave he had earned but not taken. In relation to compensation, the manner of his termination was not proper and I would award him payment for 3 months as compensation.

7. He is entitled to recover from the Respondent the following sums:-

a. Leave days - Kshs. 510,000/-

b. Salary in Lieu of Notice – Kshs. 70,000/-

c. Salary for 4 days – 9,333.30/-

d. Compensation – Kshs. 210,000/-

subtotal Kshs. 799,333.30/-

Less 300,000/- received

Total Kshs. 499,333/-

8. He will also have costs and interest on the above at Court rates.

It is so ordered.

Dated and delivered at Nairobi this 24th day of May 2013

Hon. Mr. Justice Nzioki wa Makau
Judge