



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO. 2225 OF 2012

ERICK OTIENO OWINO CLAIMANT

VERSUS

HEBATULLAH BROTHERS LIMITED RESPONDENT

JUDGEMENT

This is a claim dated 3rd October 2012 by the claimant Erick Otieno Owino for unfair termination and non-payment of terminal dues by the respondent Hebatullah Brothers limited. Summons were served and a hearing notice served upon the respondent and an affidavit of service filed dated by 14th May 2013 as sworn by Geoffrey Anami. Hearing proceeded on 30th May 2013 noting the non-appearance of the respondent.

In the claim, on 17th October 2004 the claimant was employed by the respondent as an electrician/driver with his last salary being kshs.10, 630.00 per month but on 5th May 2012, he was terminated from his employment without any warning, notice or payment of terminal dues or being reinstated. That he has gone to the respondent severally seeking to be reinstated back to his job as there were no reasons given for his terminal but they have adamantly refused and further neglected to pay his dues amounting to kshs.198, 730.00 on his one month notice at kshs.10, 630.00 his leave days amounting to Kshs.63, 780.00 and compensation for 12 months amounting to Kshs.124, 320.00. He therefore claims that his termination was unfair and that his terminal dues should be paid.

The claimant gave his sworn evidence that he was employed by the respondent as a casual and progressed through the years until his last position as a driver earning Kshs.10, 670.00 per month. That on 5th May 2012 he asked the respondent for his pay since he noted that he was being underpaid and the human Resource Officer Mr. Zoeb Kapacee promised to increase his pay at his Grade III but this was not effected and upon asking, he was chased away and told not to incite the others who wanted to continue working. That he went back and tried to get into the work place but he was chased away and the respondent officers refused to listen to him.

That he was affected by this termination as he could not support his family and he had to move them back to his village in Kisumu. That he had been a casual for many years and had persisted until 2010 when he became a permanent employee, and then he was terminated after only 3 years. That he was paid through vouchers and a letter of appointment dated 1st February 2010. He was however not given any notice of termination and therefore it was unfair and claims compensation and his terminal dues.

The letter of appointment of the claimant dated 1st February 2012 does not state what position he was employed by the respondent or the terms and conditions of the appointment. I take it from the evidence of

the claimant that he was an Electrician/Driver of the respondent. Section 10 of the Employment Act require an employer to state the particulars of an employee's employment and failure to do so, the Court will take what the claimant's evidence on his work status to be the correct position. Noting that the respondent failed to enter appearance or offer a defence to the case, the court only had the sworn evidence of the claimant.

Where an employee is under a contract of employment as the claimant was, any termination must have a basis, otherwise the same will be found to be unfair if there are not reasons or reason indicated to warrant such termination. The claimant stated that he went to complain about not being paid his correct salary noting his job grade III and the Human Resource Manager chased him away. That since 5th May 2012, he has not been taken back to his job since the respondent feared that he was inciting his fellow employees. This is not a good reason for termination under any established law. To terminate an employee who raises a grievance or grievances at his place of work is not a valid or reasonable ground. In the absence of this notice of termination or the reasons for the termination I find the claimant was unfairly terminated. This court will award the claimant 3 months pay in compensation.

The claim for notice pay is also due as no notice is indicated to have been issued to the claimant by the respondent before the termination. I will award the claimant the one month pay in lieu of termination notice.

Leave days due to any employee are payable as due at the time of termination. The claimant claim for leave days due for the duration when he was a permanent employee are all due as well as for the time the entire duration since 2004 when he was continuously engaged as a casual. The employment having been continuous and uninterrupted, the leave days due should have been taken or paid for, which the respondent failed to do. I will therefore award as claimed the amount of Kshs.63, 780.00.

Judgment is hereby entered for the claimant as against the respondent in the following terms:

- a. **A declaration That the claimant was unfairly terminated by the respondent;**
 - i. **Compensation for unfair terminated awarded at kshs. 31,890.00**
 - ii. **Notice pay amounting to Kshs.10,630.00**
 - iii. **Leave due amounting to Kshs.63,780.00**

Total due amounting to Kshs.106, 300.00

- b. **The respondent to issue the claimant with a Certificate of Service within 14 days from the date hereof.**
- c. **Costs of the suit to the claimant.**

Delivered in open court this 24th day of June 2013

M. Mbaru

Judge.

In the presence of

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