



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 1985 OF 2012

FREDERICK WERE CLAIMANT

VERSUS

MK JEFFERY'S HAULIERS.....RESPONDENT

JUDGEMENT

This is a claim dated 1st October 2012 by the claimant Frederick Were for unlawful termination of his employment by the respondent. The respondent though served with summons herein did not enter appearance or file their defence. An affidavit of service was filed indicating that service was effected upon the respondent at their offices at MK Jeffery's Hauliers at Bandari Plaza Mezzanine floor in Westlands, along Mpaka road. Judgement was entered upon request on 23rd may 2013 and the matter proceeds for the confirmation of the claim.

The claimant stated that he was an employee of the respondent for 4 years but on 16th May 2012 was terminated without payment of his house allowance due and without being given any reasons for termination or his salary for the month of May 2012 being paid. No annual leave was given or payment for leave days not taken made to him and that his certificate of service was not issued when he was terminated.

His salary was 30,000.00 a month and a letter of appointment was given to him but no terms and conditions were attached and thus claim his house allowances, notice pay, leave due and compensation for unfair termination.

In evidence the claimant gave his sworn statement and stated that he was employed by the respondent initially as a Truck Driver and thereafter was promoted to a supervisor in the company graduating from a pay of Kshs.16, 000.00 to 30,000.00. For which he signed vouchers but all dues were not covered and no pay slips were given as most times his salary was sent through his phone when he was out on long journeys for delivery of goods. That on 16th May 2012 he was terminated without any reasons being given to him.

He stated that in November 2011 he had an accident, he was treated and resumed work but was made a supervisor with a salary of 30,000.00 but not all pay slips were issued, most payments were over the phone. That the claimant travelled to Nyeri on duty and whiles out in the field the respondent called him from the head office and was told that he had been terminated. He demanded for his upkeep money while out on duty but the respondent officer was angry and demanded to know how many trips had been made and that no explanation was accepted since he was already terminated. That on this trip to Nyeri, the claimant was accompanied by two other workmates a driver and assistants but they were not terminated.

That his termination over the phone was without notice and he went into shock as it was unexpected and there had been no prior warning and he was dependent on this job to support himself and his family and noting that he was way from home working for the respondent, the decision to terminate him thus was most unfair. He has a wife and 3 children one was in form 3 and had to drop out of school, the other was in class 7 and had to be changed from a private school to a public school and the last one was in nursery school and had to stop due to lack of school fees. That he only returned his child in high school after being awarded a bursary.

That he tried to talk to the respondent but nobody was willing to give him a hearing or the reasons for his termination. That on 1st July 2012 he wrote to the respondent but no response was forthcoming. The claimant now asks the court to direct that the respondent should pay him his 16 days worked in May 2012, notice pay, leave for 4 years, his house allowance due and compensation for unfair termination.

The claimant also called a witness in support of his claim. Irene Kasiva Muthusi who in her sworn evidence stated that she was a former employee of the respondent as an Administrator and worked with the claimant for 3 ½ years and knew him as one of their drivers and then a supervisor. That when the claimant injured his leg in an accident, he was made a supervisor. When he resumed work after his accident, he fell again and had to seek treatment before he resumed as a supervisor.

The witness stated that as the office administrator, all communication that came to the respondent were received by her as she also manned the reception. That the claimant delivered his demand letter to the respondent, she received it and handed it over to the respondent officer who read it but on the following day when she was cleaning the office she found the same letter in the dust bin. She thought that this was a mistake and so took it and gave it back to the respondent officer who said that the claimant can take him wherever he wanted and returned it to the dust bin.

Upon close of the case the claimant made written submissions.

The days when employers treated their employees with disrespect are gone with the enactment of the Employment Act, 2007. This law grants rights to an employee who is terminated without due regard to due process and the applicable law. Apart from such an employee claiming their terminal dues, such an employee can also claim compensation for unfair termination and on support of such a claim the court can grant such compensation.

It is obvious that the claimant was terminated over the phone and his efforts to access the respondent offices to discuss his termination was not welcome hence reasons for termination were not given or proved by the Respondent as envisaged Under Section 43 of the Employment Act. The termination was therefore unfair. It is also clear that the Respondent did not serve a notice and accord the claimant a hearing as contemplated under Section 41 of the Act.

Accordingly, the Claimant's contract of employment was unfairly terminated within the meaning of unfair termination in Section 45 of the Act and in breach of Section 41 of the Act prescribing notification and hearing before termination on grounds of misconduct. In addition, the Respondent in this case have failed to prove the alleged reasons for termination and therefore the termination was unfair under Section 43 of the Act requiring the employer to prove reasons for termination.

On the claim for notice pay, I note the evidence of the claimant was that he was called over the phone and terminated and when he tried to discuss the matter with the respondent he was not successful and his letter of demand for his dues was placed in the dust bin. I will grant notice pay and the last pay of the claimant at Kshs.30, 000.00

Outstanding dues to employees should be computed to the last day at work. The claimant stated that he was terminated on 16th March 2012 while away on duty and was not paid. I will award the amount of kshs. 16,000.00

Where leave is due the same must be granted with a pay equivalent to one month. For the 4 years, I will

grant the sum of kshs.120, 000.00

I note from the claimants' payment vouchers that he was not given his house allowance and the pay given to him was not all inclusive. House allowance was not give for the 56 months that he worked for the respondent. I will make an award of Kshs.200, 000.00

I also note that no dues were remitted to NSSF of NHIF as against the provisions of section 35 of the Employment Act. I will ward service pay at 15 days pay for each of the 4 years worked based on the last salary being an amount of Kshs.60, 000.00

For the above reasons, I enter judgment for the claimant as against the respondent in the following terms;

- 1. A declaration that the claimant was unfairly terminated.**
 - a. Compensation of 6 months' salary at Kshs.180, 000.00**
 - b. Service pay at kshs.60, 000.00**
 - c. Notice pay at Kshs.30, 000.00**
 - d. Salary due for May 2012 at Kshs.16, 000.00**
 - e. Leave pay for 4 years at kshs.120, 000.00**
 - f. House allowance for the 56 months at Kshs.200, 000.00**

Total due amount Kshs. 606,000.00

- 2. I direct the respondent to issue the claimant with a Certificate of Service within 14 days.**
- 3. Costs of the suit to the claimant.**

Delivered in open court this 13th day of June 2013.

Mbaru

Judge

In the presence of

.....

.....

.....