



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 124 OF 2013

(Formerly Nairobi Cause No. 1465 of 2011)

HEZRON VUYOYWA MALIMU.....CLAIMANT

-VERSUS-

RIVATEX EAST AFRICA LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 12th July, 2013)

JUDGMENT

The claimant **Hezron Vuyoywa Malimu** filed the statement of claim on 29.08.2011 through Wambua Kigamwa & Company Advocates. The claimant prayed for:

- a. **A declaration that the redundancy as carried out by the respondent was unlawful and contravened section 40 of the Employment Act, 2007.**
- b. **Kshs.100,200/= comprising:**
 - i. **One month salary in lieu of redundancy notice – Kshs.10,020.00.**
 - ii. **3 years unpaid leave at 10,020.00 for 30 days for each of the three years worked – Kshs.30,060.00.**
 - iii. **3 years severance pay at a month's salary per year served – Kshs.30,060.00.**
 - iv. **3 years gratuity at a month's salary per year served – Kshs.30,060.00**
- c. **Costs and interest.**

The respondent filed the reply to the memorandum of claim on 21.06.2013 through Kalya & Company Advocates. The respondent prayed that the claimant's claim be dismissed with costs.

The case came up for hearing on 10.07.2013 when the respective Advocates for the parties agreed to make oral submissions without calling witnesses but relying upon the documents and the pleadings on record.

In view of the oral submissions, the court makes the following findings:

- a. The agreed leave was 30 days per twelve months of service. The claimant served for 3 complete

- years. The computation made during the submissions showed that at termination there were 31 leave days due but not taken. The court finds that the claimant is entitled to **Kshs.10,354.00** being payment for the due 31 leave days.
- b. The parties agreed upon leave travel allowance. In 2009, the agreed Kshs.1,500.00 was paid, in 2010 only Kshs.500.00 was paid and in 2011 there was no payment. The court finds that the claimant is entitled to **Kshs.2,500.00**.
 - c. The respondent admitted that the claimant was entitled to severance pay at the statutory rate of 15 days per year worked as per section 40 of the Employment Act, 2007. In absence of a more favourable agreement between the parties, the court finds that the submission is well grounded and the claimant is entitled to **Kshs.15,030.00** for severance pay.
 - d. The respondent submitted that the claimant was entitled to the gratuity as prayed for and the court finds that the claimant is entitled to **Kshs.30,060/=** accordingly.

The claimant submitted that the redundancy was unlawful as it contravened section 40 of the Employment Act, 2007. In particular, the requisite one month statutory notice was not served and the selection criteria entailing seniority considerations were not shown to have been adhered to. The court finds that the claimant's submissions were valid as they were not rebutted in view of the respondent's material on record and in view of the unfair termination by way of redundancy, the court awards the claimant one month gross salary being **Kshs.10,020.00**.

In conclusion, judgment is entered for the claimant against the respondent for:

- a. A declaration that the respondent's termination of the claimant's employment by way of redundancy was unlawful and unfair because of contravention of section 40 of the Employment Act, 2007.
- b. The respondent to pay the claimant **Kshs.67,964.00** by 1.09.2013 in default interest to be payable from the date of the judgment till full payment.
- c. The respondent to pay costs of the suit.

Signed, dated and delivered in court at **Nakuru** this **Friday, 12th July, 2013**.

BYRAM ONGAYA

JUDGE