



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 351 OF 2013

SAMUEL G. KARITU.....CLAIMANT

-VERSUS-

CRATER AUTOMOBILE (NBI) LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 20th December, 2013)

JUDGMENT

The Claimant is **Samuel G. Karitu** and the respondent is **Crater Automobile (NBI) Limited**. The claimant filed the memorandum of claim on 6.11.2012 through Orina & Company Advocates. He prayed for judgment against the respondent for:

- a. **One month pay in lieu of notice Kshs.21,905.00.**
- b. **Severance pay or gratuity Kshs.788,544.00.**
- c. **Full monthly salary per year from 2006 to 2012 (6 years) Kshs.131, 430.00**
- d. **12 months compensation under section 49 (c) of the Employment Act, 2007 Kshs.262,860.00.**
- e. **Costs of the case.**
- f. **Any other relief the court may deem fit to grant.**

The respondent filed the memorandum of response on 21.11.2012 through Oumo & Company Advocates and prayed that the suit be dismissed with costs.

The case was heard on 15.11.2013. The claimant gave testimony to support his case and the respondent's witness was its Administrative Assistant, Joel Ihugo Karanja (**RW**).

On 13.08.2012, the claimant was in the respondent's employment as a mechanic when it was reported that some items had been stolen. RW called in the police and the claimant was arrested. The claimant testified that he was subsequently dismissed by the respondent without any notice or a hearing. He was simply told orally by the managing director, Khan to leave employment because he was said to be a thief. That was at about 4.00 pm on 13.08.2012. The claimant was subsequently acquitted in the criminal case No. 2864 of 2012 in the Chief Magistrate's Court at Nakuru and was not paid any terminal dues. The claimant admitted that at termination, he had not repaid the respondent Kshs.8,000.00 being salary advanced.

RW testified that the respondent was ready and willing to pay the salary for August, 2012 being Kshs.21,905.00 as claimed, the claimant's last gross pay. He admitted that the criminal case ended in the claimant's acquittal and there was no any appeal. RW stated that after the arrest, he never saw the claimant again and he presumed that the claimant had decided to abscond from duty. RW stated that the claimant was not victimized because it was the police objective investigations that led to the claimant's

arrest. He also testified that the managing director could not have met the claimant and dismissed him on 13.08.2012 because the managing director had been absent on that date. He testified that the respondent was willing to reinstate the claimant. RW testified that the respondent was willing to pay one month salary in lieu of notice Kshs.21,905.00; August, 2012 salary of Kshs.21,905.00; humanitarian service pay at Kshs.102,200.00 being at 20 days for each year worked; and less tax, statutory deductions and Kshs.8,000.00 salary advance making a net of **Kshs.95,758.00**. RW testified that the respondent would be ready to pay a day after the relevant court order.

The main issue in dispute in this case is whether the claimant was unfairly terminated on 13.08.2012. The claimant has in paragraphs 5 and 6 of the memorandum of claim pleaded that he was suspended. The pleading is inconsistent with his evidence that he was orally dismissed by the managing director. Accordingly, the court finds the account by RW credible and finds that the claimant was not orally dismissed but that after the arrest, he did not bother to resume duty. The court further finds that there was no dismissal or termination of the claimant's employment by the respondent.

The court has considered the respondent's offer of **Kshs.95,758.00** and finds it reasonable and just in the circumstances of the case and the claimant is entitled accordingly. In view that the offer was made in the memorandum of response, the respondent will pay the claimant 50% of the costs of the suit. The court finds that all the other claims in the memorandum of claim shall fail except that the claimant is entitled to the certificate of service.

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

- a. the respondent to pay the claimant Kshs.95,758.00 by 24.12.2013, failing, interest to be payable at court rates from the date of the judgment;
- b. the respondent to pay 50% of the costs of the suit; and
- c. the respondent to deliver to the claimant the certificate of service by 24.12.2013.

Signed, dated and delivered in court at **Nakuru** this **Friday, 20th December, 2013**.

BYRAM ONGAYA

JUDGE