



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NO. 136 OF 2013

LUCAS ODERACLAIMANT

VERSUS

HABO AGENCIES LTD [Awanad CFC security Ltd].....RESPONDENT

J U D G M E N T

BACKGROUND

The claimant brings this suit against the respondent alleging unfair termination and claiming kshs.71400 as terminal dues. The respondent did not file any defence to the claim after filing a Memorandum of Appearance through her advocate. The matter therefore proceeded with the evidence of the claimant who testified alone as CW1 on 17/9/2013.

CLAIMANTS CASE

CW1 told the court that he was dismissed on 16/8/2012 following a theft which occurred on 15/8/2012 while he was on duty as a guard. When he left duty and handed over to the day guard they inspected the premises and there was no sign of theft as the doors were all securely locked. Two and a half (2 ½) hours after leaving work his boss's driver called to tell him that the door to the officer on the 1st floor had been opened and 8 computers stolen.

He contended that he never witnessed any theft the whole night he was guarding the premises from the ground floor with another fellow guard. He returned to the office from where he was arrested by police and charged with a criminal case. The case was however never heard and the claimant was finally acquitted for lack of evidence. After the acquittal, the claimant returned to work but the HR Manager told him to wait for 2 weeks. After the 2 weeks the claimant returned to the office only to be told to go and leave his telephone number and wait for a call after the boss was consulted on the return to work.

After waiting for the promised call in vain, the claimant went to see the HR manager who demanded to see evidence of the claimants acquittal which he brought from the CID. He was still not allowed back and that is when he sought legal advise. A demand letter was served on respondent but no response was given. A second demand was served and again not responded but the HRM called the claimant and indicated that he intended to reinstate him but that was never to be.

Consequently he filed this suit but it was not responded to. According to the claimant, the respondent called him for out of court settlement the day before the hearing but he refused due to the delay. He prayed for terminal dues because the respondent had refused to reinstate him after the

acquittal. The claimant was not represented by counsel, hence no submissions were filed.

The issue whether the termination was unfair was not contested and therefore the court finds in favour of the claimant that the termination was unfair within the meaning of the Section 45 of the Employment Act.

The only issue that arises for determination is whether the claimant is entitled to ksh.71400 as terminal dues. The claimant alleges that he served the respondent for 7 years and claims for kshs.35000 as service pay. He also prays for one month's salary in lieu of notice being ksh.10000/-. He produced a letter of appointment dated 31/1/09 which backdated the appointment dated to 19/7/2006. A simple calculation works the period of service to 6 years. The letter provided for a termination notice of one month or salary in lieu of notice.

The claimant produced a payslip for August 2012 showing his gross salary as ksh.10000/-. Consequently the court is satisfied that the claimant is entitled to kshs.10000 in lieu of notice. He will however not get service pay because the said payslip shows that he was a contributor to the NSSF and therefore disqualified from service pay by Section 35 of the Employment Act.

The claimant has also prayed for refund of in-house savings amounting to ksh.24000. No evidence was tendered in support of the said sum of ksh.24000/.

The only evidence available is the payslips which reflect an in-house savings amounting to ksh.12000/-. The court will therefore only award ksh.12000 as refund towards in-house savings.

The claim for medical expenses of ksh.2400 was not properly pleaded and no evidence was led to prove the basis for making such a claim as an employment terminal benefits. It does not fall within the provisions of Section 35 or 49 of the Employment Act and it is not supported by a written contract. Consequently, it is dismissed.

Lastly the claimant prayed for any other relief which court deems just. It is appreciated that the claimant was acting in person and may not have the capacity to specifically plead adequately. In view of the court's finding that the termination was unfair, the court deems fit and lawful to award 12 months gross salary, ksh.120,000 to the claimant as compensation for unfair termination.

DISPOSITION

in view of the reasons above stated, judgment is hereby entered for the claimant against the respondent as follows:

- (a) **one month's salary in lieu of notice10,000**
 - (b) **refund of house savings 12,000**
 - (c) **12 months salary for unfair termination.....120,000**
- 142,000**

The claimant will also have costs of the suit.

Signed dated and delivered this 6th day of December 2013

ONESMUS MAKAU

JUDGE