



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 439 of 2011

ABDALLA WAMIRA OMONDI CLAIMANT

VERSUS

ALI HASSAN ABDIRAHMAN.....RESPONDENT

JUDGMENT

The Claimant is Abdalla Wamira Omondi. The Respondent is Ali Hassan Abdirahman.

The claimant filed the memorandum of claim on 23rd March, 2011. He pleaded that he was employed by the Respondent as a driver on 25th June 2009 at a monthly salary of Ksh.20,000/= and the contract of service was oral as the Respondent did not issue a written letter of appointment. That the claimant served the respondent with loyalty and diligence until 6th November 2010 when the Respondent wrongfully and unlawfully terminated the services of the claimant. The claimant prayed for judgment against the respondent for:

- (a) Ksh.44,000/= being one month pay in lieu of notice, accrued annual leave and severance pay;
- (b) Compensation for wrongful dismissal to a maximum of 12 months wages amounting to Ksh.240,000.00
- (c) Costs of the suit;
- (d) Interest; and
- (e) Any other relief as the court may deem just.

On 31st October, 2012 the case came up for hearing when the claimant gave oral evidence as follows:

- (a) The respondent is a former Member of Parliament for Wajir South. He was a Member of Parliament at all material times.
- (b) The respondent employed the claimant at a monthly salary of Ksh.20,000/= with effect from 25th July, 2009.
- (c) Since the respondent was a Member of Parliament he made arrangements and the claimant was issued with the National Assembly of Kenya permanent entry pass dated 5th November, 2010 and valid

up to 30th April, 2010. He produced it and it was marked exhibit C₁.

(d) After the termination the claimant visited Kituo Cha Sheria and the Respondent was addressed and served with the letter Ref. No. NKS/31622/11/010 dated 29th November, 2010 attached on the memorandum of claim marked Appendix 1.

(e) After the demand letter by the Kituto Cha Sheria the parties met and the Respondent agreed to pay the claimant Ksh.44,000/= as demanded.

(f) The Claimant worked with the Respondent until 6th November, 2010 and the Respondent lost his Parliamentary Membership following the by-elections held on 13th October, 2010. It was after that election that he dismissed the Claimant without paying the terminal dues.

(g) Of the agreed Ksh.44,000/= the Respondent has paid the Claimant by way of instalments a sum of Ksh.17,000/= so that of the agreed amount there is a balance of Ksh.27,000/=.

Counsel for the respondent submitted as follows:

(a) That the claimant had not proved the existence of a contract of service.

(b) If the court finds that the employee was in a contract of service, then he is entitled to only one month salary in lieu of notice.

The court has considered the evidence, the pleadings and submissions on record and makes the following findings:

(a) The parties were in an employment relationship in which the respondent paid the claimant a sum of Ksh.20,000/= being the monthly salary. Being a contract for payment of a monthly salary, the claimant was entitled to a 28 days termination notice as per Subsection 35 (1) (c) of the Employment Act, 2007. The notice was not given and the claimant is entitled to Ksh.20,000/= being one month salary in lieu of notice. The claimant in his evidence accepted having been paid Ksh.17,000/= and therefore the court will award him a net of Ksh.3,000/= on this account.

(b) The claimant has prayed for Ksh.240,000.00 in view of the dismissal. The claimant had worked for the Respondent from 25th June 2009 to 6th November, 2010. It is obvious that the reasons for termination have not been 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. However, the court takes into account the circumstances leading to the Claimant's termination of service, namely, the respondent ceased to be a Member of Parliament. In the circumstances, the court awards the claimant six months gross salaries for the unfair termination being Ksh.120,000/=.

In conclusion, the court finds that the claimant has proved his claims on a balance of probabilities. Judgment is entered for the claimant against the Respondent for:

(a) the Respondent to pay the claimant a sum of Ksh.123,000/= plus interest at court rates from the date of the judgment till full payment;

(b) the respondent to pay the costs of the cause; and

(c) the respondent to issue and deliver a certificate of service for the claimant.

Signed, dated and delivered this 5th day of November, 2012.

**BYRAM ONGAYA
JUDGE**