



REPUBLIC OF KENYA



**Mutanda v Parbat Siyani Construction Ltd (Cause 541 of 2017)
[2025] KEELRC 877 (KLR) (19 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 877 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 541 OF 2017
B ONGAYA, J
MARCH 19, 2025**

BETWEEN

JOHN ASHIOYA MUTANDA CLAIMANT

AND

PARBAT SIYANI CONSTRUCTION LTD RESPONDENT

JUDGMENT

1. The claimant filed his Memorandum of Claim on 02.03.2017 through Omas Omosa & Co Advocates. The claimant prayed for judgment against the respondent for:
 - a. A declaration that the Respondent's action of sacking the claimant is illegal and/or unlawful, that the claimant is entitled to severance pay, terminal benefits, 1 month in lieu of notice, salary underpayments all totalling Kshs 465,465 as particularized in paragraph 6 of the statement of claim.
 - b. General damages for wrongful dismissal as the court shall assess.
 - c. Costs of the suit and interest.
 - d. Any other relief that this court may deem fit to grant.
2. At paragraph 6 of the memorandum of claim the claimant claimed as follows:
 - a. Certificate of service.
 - b. A month salary in lieu of notice Kshs.27, 300.00.
 - c. Unpaid for leave for one year worked Kshs.27, 300.00.
 - d. Severance pay for one-year worked Kshs.13, 650.00.
 - e. House allowance at 15%salary for each year worked Kshs.69,615.00



- f. General damages for wrongful dismissal Kshs.327, 600.00.
 - g. Total sum claimed Kshs.465, 465.00.
3. The Respondent's Reply to Memorandum of claim was dated 29.06.2017 and filed through Mogeni & Co Advocates. The respondent prayed that the suit be dismissed with costs to the respondent.
 4. The claimant's case was that he was employed by the respondent in the year 2016 as a driver for the concrete mixer.
 5. The claimant stated that he worked diligently up to the year 2017, when on 18.11.2017, he was served with a termination notice on the grounds of redundancy.
 6. The claimant stated that the truck he was driving was handed to someone else in his presence.
 7. Further, the claimant stated that the respondent is still operational to date, and therefore, it is the claimant's case, that it was unfair to have terminated his employment on account of redundancy.
 8. It was the claimant's testimony that although he had not produced the letter of appointment or a contract, he had furnished the court with his payslip and NSSF statement showing that he was paid by the respondent.
 9. On the part of the respondent, it is stated that the claimant was employed by the respondent as a driver and started employment duties on 01.07.2015.
 10. Subsequently, on 18.11.2016 the respondent issued him a termination notice, wherein it informed the claimant that his employment with the respondent would be terminated on 18.12.2016, for reasons that the work available was reduced and should things become normal, he would be informed.
 11. The claimant was required to report to the head of department daily to have his attendance card signed as he attended to his duties and responsibilities up to the last day, 18.12.2016.
 12. The respondent prepared a cheque in favour of the claimant for the sum of Kshs 49,684 dated 21.12.2016. However, the said cheque was never collected by the claimant.
 13. The parties agreed to resolve the dispute through mediation and the dispute was referred for mediation before Christine Mwikali Kipsang, Labour officer.
 14. The mediation proceedings did not bear results and the same were terminated as the parties failed to come to an agreement.
 15. The respondent maintains that a notice of termination was issued to the claimant in accordance with the law.
 16. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows:
 - a. The evidence is that the claimant worked for the respondent from 01.07.2015 to 18.11.2016.
 - b. The mutual parties' testimonies by the claimant and respondent's witness (RW) were that termination was on account of redundancy due to reduced work load. RW testified that most workers lost employment.
 - c. It is not shown how the drivers put on redundancy were determined upon section 40 of *Employment Act* requiring considerations such as seniority in time and suitability for retentions. The termination was immediate without a statutory month's notice to the claimant



and the area Labour Officer per section 40 of the Act. The Court finds that the termination was unfair in procedure. The claimant had served for only a year. He did not contribute to his unfair termination. In consideration of those factors as envisaged in section 49 of the Act, he is awarded two months for unfair termination making Kshs. 54,600.00; one month in lieu of termination notice Kshs.27,300.00; one month leave pay for one year served Kshs.27,300.00; severance pay for one year served Kshs.13, 650.00 and making a sum of Kshs.122,850.00. The claimant has not pleaded particulars and justification for the house allowance and no testimony was made in that regard. While section 31(1) of the Act provides for payment of reasonable housing provision, the claimant has not shown that the payment of agreed salary was exclusive reasonable provision for house allowance. The contractual and statutory basis is not established at all especially that the claimant has not shown that throughout his service there had been a grievance about house allowance. The Court's inference is that the agreed monthly pay was inclusive reasonable provision for housing and was therefore consolidated per section 31 of the Act. It is true that the exhibited payslip stated basic pay Kshs.27, 300.00 but again the claimant made pleadings and prayers based on a gross pay of the said Kshs.27, 300.00. The claim for house allowance is therefore declined.

17. In conclusion judgment is hereby entered for the claimant against the respondent with orders as follows:

1. The declaration that the termination was wrongful and unfair.
2. The respondent to pay the claimant the sum of Kshs.122,850.00 less PAYE by 30.04.2025 failing interest to run thereon at Court rates from the date of filing the suit until full payment.
3. The respondent to deliver the certificate of service by 30.04.2025.
4. The respondent to pay claimant's costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 19TH MARCH, 2025

BYRAM ONGAYA

PRINCIPAL JUDGE

