



Ochieng v China State Construction Engineering Corp (Kenya) Ltd (Cause E001 of 2022) [2023] KEELRC 384 (KLR) (3 February 2023) (Judgment)

Neutral citation: [2023] KEELRC 384 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE
CAUSE E001 OF 2022
NJ ABUODHA, J
FEBRUARY 3, 2023

BETWEEN

RONALD OTIENO OCHIENG CLAIMANT

AND

**CHINA STATE CONSTRUCTION ENGINEERING CORP (KENYA)
LTD RESPONDENT**

JUDGMENT

1. The claimant alleged that he was employed via an oral contract as a heavy commercial truck driver by the respondent on December 1, 2019 until March 1, 2021 at a monthly salary of ksh 29,190/= (daily ksh 973).
2. On March 1, 2021 the claimant reported to his place of work for duty as usual but was prevented from working on grounds that the truck assigned to him was scheduled for maintenance and was thus directed to go back home and wait to be called.
3. The claimant stated that he abided by the instructions and went home but was never recalled and he started frequent follow ups. On July 26, 2021 the respondent's human resource officer informed the claimant that there were no plans to recall him and asked him to move on with his life.
4. The claimant further averred that during the period he worked the respondent subjected him to unfair labour practices by failing to issue him with payslips, underpaying him, not issuing him with a letter of appointment, denying him house allowance. The claimant further claimed he worked overtime and was never paid. The claimant therefore sought a declaration that the termination was unlawful and unfair and for compensation and terminal benefits.
5. The respondent though served never entered any appearance or filed a response to the claim.



6. At the trial, the claimant stated he relied on his statement dated April 19, 2022. He also relied on supporting documents filed with the claim.
7. In his statement he stated that his work station was Endebess town where the respondent had road construction works. His duties entailed ferrying materials to and from construction site and also dumping soil from the site at designated locations. His daily wage was ksh 973 which according to him was below statutory minimum wage for workers in building and construction industry. The basic minimum and hourly wage was ksh 1,299/= and 243.05 respectively. The claimant thereafter in his statement repeated the averments in his statement of claim as constituting his evidence in support of the claim.
8. The court has reviewed and considered the claim and the evidence in support and has noted that apart from alleging working overtime the claimant never adduced any evidence to show at what time he reported to work and left and further the nature of the work he was performing that necessitated working overtime. The only aspect of the claim which the Court agrees with the claimant is the issue of underpayment and termination without following due process.
9. The court therefore awards the claimant as follows:
 - i. One month's salary in lieu of notice 38,970
 - ii. Four months' salary for unfair termination (the claimant had worked for approximately 2 years) 155,880
 - iii. Balance of underpaid salary
(1,299 – 973 x 18 months) 5,868
200,718
10. The claimant shall further have costs of the suit.
11. It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 3RD DAY OF FEBRUARY, 2023

ABUODHA NELSON JORUM

JUDGE ELRC

