



Masimba v Packaging Industries Limited (Employment and Labour Relations Cause 412 of 2017) [2023] KEELRC 3370 (KLR) (20 December 2023) (Judgment)

Neutral citation: [2023] KEELRC 3370 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 412 OF 2017
MN NDUMA, J
DECEMBER 20, 2023**

BETWEEN

PAUL MULI MASIMBA CLAIMANT

AND

PACKAGING INDUSTRIES LIMITED RESPONDENT

JUDGMENT

1. The claimant filed suit on 2nd March 2017 against the respondent. Summons to enter appearance and statement of claim were served on the respondent on 18th May 2017 by one George Okwemba, a court process server. The respondent did not enter appearance or file a statement of defence to the suit.
2. The suit proceeded undefended on 27th March 2023. The claimant relied on the documents filed and a witness statement dated 1st March 2017 as his evidence in chief. The claimant seeks the following:
 - a. One month salary in lieu of notice in the sum of Kshs. 26,730/=.
 - b. Payment in lieu of untaken leave days for 3 years in the sum of Kshs. 93,000/=.
 - c. Severance pay in the sum of Kshs. 93,000/= and
 - d. Compensation.
3. The claimant testified that he was employed by the respondent in November 2010 as a Machine Operator. That he worked for the respondent until May 2014. That he was paid Kshs. 26,730/= per month at the time of termination. The claimant stated that his left middle finger was amputated by the machine on 27th August, 2011 because he worked without any protective gear. That he was treated at Nairobi West Hospital for four (4) days and was discharged.
4. The claimant returned to work but the company declined to give the claimant lighter duties due to his injury and his inability to perform heavy tasks. The supervisor forced him to continue operating the



machine which he could not do due to the injury sustained. The supervisor declined to listen to the plea by the claimant and termed his explanation as rude. The claimant denied that he was rude to the supervisor. The employment of the claimant was however.

5. The suit by the claimant having not been defended, the court finds that his employment was terminated for no valid reason and without following fair procedure. That no notice of termination was given to him nor was he paid in lieu of notice.
6. The respondent violated Sections 36, 41, 43 and 45 of the *Employment Act*, 2007 and the court finds that the termination was unlawful and unfair. The claimant is entitled to compensation in terms of Section 49(1)(c) and (4) of the *Employment Act* 2007. The claimant had served the respondent for a period of three years.
7. The claimant worked diligently and got injured due to failure by the respondent to provide him with protective gear. The claimant suffered loss and damage as a result of the unlawful termination. The claimant was not compensated for the loss. The claimant did not contribute to the termination. The claimant is awarded the equivalent of three (3) months' salary in compensation in the sum of Kshs. 133,650/=.

Terminal Benefits:

8. The court awards the claimant Kshs. 26,730/= in lieu of one month notice and Kshs. 93,000/= in lieu of leave days not taken for 3 years. The claimant did not prove the claim for severance pay since he was not declared redundant.
9. In the final analysis judgment is entered in favour of the claimant against the respondent as follows:-
 - a. Kshs. 133,650/= in compensation.
 - b. Kshs. 26,730/= notice pay.
 - c. Kshs. 92,000/= in lieu of unpaid leave days for three (3) years.
Total amount Kshs. 253,380/=
 - d. Interest at court rates from date of judgment till payment in full
 - e. Costs of the suit

MATHEWS N. NDUMA

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER, 2023

Appearances

Ms. Kerubo for Ms. Arati for claimant

