



**Shengo v Nihal Construction Limited (Employment and Labour Relations Cause 413 of 2017) [2023] KEELRC 3371 (KLR) (20 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3371 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 413 OF 2017**

**MN NDUMA, J  
DECEMBER 20, 2023**

**BETWEEN**

**LEVI KERONYE SHENGO ..... CLAIMANT**

**AND**

**NIHAL CONSTRUCTION LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed suit on 2<sup>nd</sup> March 2017 against the respondent seeking compensation for unlawful termination and payment of terminal benefits including:
  - a. Payment for holidays worked for 8 years  $(12 \times 8) \times 10,400 \times 1/225 \times 3 =$  Kshs. 13,312/=.
  - b. Travelling allowance for 8 years @10,400/= per year Kshs. 83,200/=.
  - c. Payment in lieu of untaken leave days for 8 years Kshs., 83,200/=.
  - d. Gratuity for 8 years served @ 15 days salary per year Kshs. 41,600/=
  - e. Payment in lieu of one month notice Kshs. 10,400/= and
  - f. Costs and interest
2. Summons to enter appearance and statement of claim were served on the respondent on 18<sup>th</sup> May 2017 by one Jacob Okwembe Mulanda a court process server of the court. He filed an affidavit of service sworn to on 18<sup>th</sup> May 2017.
3. The respondent did not enter appearance nor file a statement of defence to the suit. The matter proceeded to formal proof relying on the statement of claim, verifying affidavit and witness statement of the claimant who told the court that he was employed by the respondent in 2008 and worked diligently for the respondent until 18<sup>th</sup> October 2016 when his services were terminated. That his salary was Kshs. 10,400/= per month. That he was working as usual on 18<sup>th</sup> October 2012, when a



representative of the company instructed him to leave the company premises at once otherwise he would have the claimant forcefully removed.

4. The claimant approached the respondent requesting the certificate of service but was not given. The respondent also failed to pay the claimant full terminal benefits. That the termination was unlawful and unfair. The claimant seek payment of the terminal benefits and compensation for the unlawful and unfair termination.
5. The claimant had served a demand notice on the respondent dated 17<sup>th</sup> November 2016 prior to the filing of the suit.
6. The suit having been undefended, the court finds that the claimant has proved on a balance of probability that his employment was terminated on 11<sup>th</sup> October 2020 for no valid reason and the respondent did not follow fair procedure in terminating the employment,
7. The termination was therefore unlawful and unfair and in violation of section 36, 41, 43 and 45 of the Employment Act, 2007.
8. The claimant was a general labourer. He had served the respondent diligently for a period of 8 years. He was sent home without notice and he suffered loss and damage. He was not compensated for the loss. The court now considering the factors set out under Section 49(4) of the Employment Act, awards the claimant the equivalent of six (6) months' salary being compensation in terms of Section 49(1) (c) in the sum of Kshs. 62,400/=.

#### **Terminal Benefits.**

9. The terminal benefits sought by the claimant under paragraph 11 of the statement of claim have not been contradicted however the claims made shall be limited to a period of three years only. The rest of the claims are time barred by dint of Section 90 of the Employment Act 2007. I therefore award the claimant as follows:
  - a. Unpaid holidays Kshs. 4,404/=.
  - b. Travelling allowance Kshs. 31,200/=.
  - c. Untaken leave Kshs. 31,200/=.
  - d. Gratuity Kshs. 41,600/=.
  - e. Payment in lieu of one month notice Kshs. 10,400/=.
10. In the final analysis judgment is entered in favour of the claimant against the respondent as follows:-
  - a. Kshs. 62,400/= in compensation.
  - b. Kshs. 118,804/= terminal benefits  
Total amount Kshs. 181,204/=.
  - c. Interest at court rates from date of judgment till the payment in full.
  - d. Respondent to provide the claimant with certificate of service within 30 days of this judgment.
  - e. Costs of the suit

**DATED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF DECEMBER, 2023**

**MATHEWS N. NDUMA**



## **JUDGE**

Appearances

Ms. Kerubo holding brief for Ms. Arati for claimant

