



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR**

**RELATIONS COURT AT NAIROBI**

**CAUSE NUMBER 1809 OF 2016**

**BETWEEN**

**GEOFFREY EMOJONG EMASU.....CLAIMANT**

**VERSUS**

**H. YOUNG & CO. [E.A.] LIMITED.....RESPONDENT**

*Rika J*

*Court Assistant: Emmanuel Kiprono*

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*Samuel Nyambane & Company Advocates for the Claimant*

*Adede & Company Advocates for the Respondent*

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**JUDGMENT**

1. The Claimant filed his Statement of Claim on 6<sup>th</sup> September 2016.
2. He was employed by the Respondent for a period of about 2 years, until 15<sup>th</sup> March 2016, when the Respondent unfairly and unlawfully terminated his contract.
3. He states that he was a Casual Labourer.
4. He earned a salary of Kshs. 18,090 monthly.
5. He claims: -
  - a. Certificate of Service.
  - b. Declaration that termination was unfair and unlawful.
  - c. Notice of 3 months at Kshs. 54,270.
  - d. Service pay at Kshs. 29,222.
  - e. Leave days at Kshs. 20,873.
  - f. General damages for wrongful dismissal at Kshs. 217,080.

Sub-total...Kshs. 321,445.

Less paid ...Kshs. 43,515.

Total Claim... Kshs. 227,930.

g. General damages for wrongful dismissal as the Court shall assess.

h. Costs and interest.

i. Any other relief as the Court may deem fit and just to grant.

6. The Respondent filed its Statement of Response on 20<sup>th</sup> September 2016. It is conceded that the Claimant was employed by the Respondent, but for a period of 18 months, beginning 16<sup>th</sup> September 2014, and ending 15<sup>th</sup> March 2016.

7. He earned a monthly basic salary of Kshs. 15,075. He was given notice of termination, and given reasons for the decision. He was paid terminal dues, which included a month's salary in lieu of notice; leave days; and gratuity at the rate of 15 days for 1 complete year of service. He signed discharge, freeing the Respondent from further claims. The Respondent prays for dismissal of the Claim with costs.

8. The Claimant gave evidence, and rested his case, on 1<sup>st</sup> October 2021. Respondent's Human Resource Manager Sarah Wangethi, gave evidence on 16<sup>th</sup> November 2021, closing the hearing. The Claim was last mentioned on 27<sup>th</sup> January 2022, when the Parties confirmed filing of their Submissions. Judgment was reserved for 5<sup>th</sup> April 2022, but unfortunately the date coincided with the Judges' Annual Conference, and Parties were informed Judgment would be delivered on notice.

9. The Claimant adopted as his evidence in chief, his Witness Statement and Documents. He confirmed that he was employed by the Respondent in June 2014, and was dismissed in March 2016. He was a Casual Labourer working at a road construction project the Respondent was undertaking, the Malaba- Webuye Road. He was a member of the Building and Construction Union, as shown in his payslips. He was informed by the Respondent that there was no more work. There was no notice. He never went on leave. He was paid Kshs. 42,415 in terminal dues, 6 months after termination.

10. Cross-examined, he told the Court that his basic salary was Kshs. 15,075. His contract document indicates his salary was Kshs. 12,688 monthly. There was no clause on 3 months' termination notice. He carried stones, and spread out cement on the road under construction. He was a Casual Labourer. He never went on annual leave, but enjoyed what was called long weekends. The project was going on, when the Claimant left. It ended in 2016. Redirected, the Claimant told the Court that his contract was open-ended.

11. Wangethi similarly adopted her Witness Statement and Documents filed by the Respondent, as her evidence in chief. The Claimant was a Casual Labourer, clearing bushes among other tasks, as the road was being constructed. The project came to an end in 2016. The Respondent normally sources labour from the local communities when constructing roads. Once the project is complete, the Labourers are released. The Claimant was paid 19 pending leave days. He was paid gratuity over the period of 1 complete year of service. He signed discharge certificate.

12. Cross-examined, Wangethi told the Court, she joined the Respondent 4 years after the Claimant left. She based her evidence on the Claimant's personnel file. The Claimant's contract was indicated to be specifically for the Malaba- Webuye project. Specific dates were not indicated. He was released on completion. It was not a redundancy situation. There was no document showing that the project came to an end.

13. The issues are whether the Claimant's contract was terminated fairly under Sections 41, 43 and 45 of the Employment Act; and whether he merits the reliefs sought.

**The Court Finds:** -

14. Parties are in agreement that the Claimant was employed as a Labourer, at a road construction site, Malaba- Webuye Road.

15. He was issued an employment form on recruitment. The form is indicated to have issued on 25<sup>th</sup> March 2014. It also has two other dates 16<sup>th</sup> April 2014 and 18<sup>th</sup> October 2014. The Claimant does not specify when he was employed in his Pleadings. In his evidence he told the Court it was in June 2014. The Respondent pleads that it employed the Claimant on 16<sup>th</sup> September 2014, while the Witness for the Respondent gave the date of employment as 16<sup>th</sup> April 2014.

16. The Court adopts the date given by Respondent's Witness, which date also appears on employment form, the 16<sup>th</sup> April 2014, as the date of employment. It is agreed that he left on 15<sup>th</sup> March 2016.

17. His monthly salary is captured on the form. Kshs. 12,688 was the basic monthly salary. Kshs. 2,538 was the monthly house allowance. The gross monthly salary was Kshs. 15,226.

18. The Claimant was paid a monthly salary, and worked in continuity. He cannot therefore be described as a Casual Labourer. He was a General Labourer, not a Casual Labourer.

19. On cross-examination, the Claimant vacillated when asked whether the road project was over, by the time he left. He nonetheless agreed that the project ended in 2016. This is the same year he left. He did not do any other work with the Respondent.

20. Once a building or other construction project ends, it is illogical for a Labourer engaged to work in the project, to expect his contract to extend beyond the project. Where did the Claimant expect to work, once Malaba-Webuye road project came to an end?

21. He was paid his dues, commensurate with the service period. He was paid pending leave, notice and gratuity. His annual leave portfolio is shown in the leave details exhibited by the Respondent. His prayer for notice period of 3 months, has no basis. His prayers for compensation, damages and additional terminal dues, are misplaced.

22. He received a total sum of Kshs. 43,515 on termination. He signed Final Discharge Certificate, confirming that he has no further claims against the Respondent or any of its Employees. Why then present this Claim, after voluntarily discharging the Respondent from further liability?

23. The Claimant shall be availed his Certificate of Service, in accordance with Section 51 of the Employment Act, 2007.

**IT IS ORDERED:** -

*a. The Respondent shall release to the Claimant, his Certificate of Service forthwith.*

*b. The rest of the Claim is declined.*

*c. No order on the costs.*

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, AT CHAKA, THIS 22<sup>ND</sup> DAY OF APRIL 2022.**

**James Rika**

**Judge**