



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 2226 OF 2016**

**BENSON MUSYOKI MUTHENGI.....CLAIMANT**

**VERSUS**

**DIMAMU AGENCIES LIMITED.....RESPONDENT**

**JUDGMENT**

1. The suit filed on 1<sup>st</sup> November, 2016 by the claimant is undefended and proceeded to formal proof.
2. The claimant C.W.1 adopted a witness statement dated 31<sup>st</sup> March, 2016 as his evidence in chief. The claimant also produced a list of documents dated 10<sup>th</sup> May, 2016 as exhibits '1' to '4'.
3. The claimant testified that he was employed by the respondent as a loader on 14<sup>th</sup> March, 2015 earning a monthly salary of Kshs. 10,660. That he worked continuously until 24<sup>th</sup> March, 2016 when he reported to work as usual and around 12.00 noon Mr. Deepark and Mr. Ocampo asked him to leave the company for good. That the two alleged that a truck, the claimant was loading had excess goods and accused the claimant of theft.
4. That no report was made to the police. The claimant was not paid terminal benefits set out in the Statement of Claim including: -
  - (i) **One-month salary in lieu of notice - Kshs 10,660.00.**
  - (ii) **Payment in lieu of one year leave Kshs 8,610.00**
  - (iii) **Payment of service pay Kshs 6,150.**
  - (iv) **Payment for public holidays worked Kshs 8,200.00**
  - (v) **Underpayment for one year 24,519.00**
  - (viii) **Off days Kshs 196,80.00.**
5. The claimant also claims compensation for unlawful and unfair dismissal.
6. In this respect, once the claimant adduced evidence of wrongful dismissal, in terms of Section 47(5), the burden shifts to the respondent to prove in terms of Section 43(1) and (2) read with 47(5) that it had valid reason to dismiss the claimant from employment.
7. The matter being undefended, the respondent failed to discharge that onus. The Court finds that the respondent did not satisfy the requirements of Sections 36, 41, 43, and 45 of the Employment Act, in dismissing the claimant without a notice; notice to show cause and/or a hearing to defend himself.
8. The dismissal was unlawful and unfair and the claimant is entitled to compensation in terms of Section 49(1) (c) and (4) of the Act. The claimant had served one year. He was not paid terminal benefits nor compensated for the dismissal. The claimant suffered loss and damages.
9. Relying on the case of **Mary Chemweno Kiptui –vs- Kenya Pipeline (2014) eKLR**, the Court awards the claimant the equivalent of (3)

months' salary in compensation for the unlawful and unfair dismissal in the sum of Kshs. (10,660 x 3) – Kshs. 31,980.

10. In the final analysis judgment is entered in favour of the Respondent as follows: -

(a) Kshs 31,980 in compensation.

(b) Kshs 10,660 notice pay.

(c) Kshs 8,610 in lieu of leave.

(d) Kshs 6,150 service pay.

(e) Kshs 8,200 for public holiday

(f) Underpayments Kshs 24,519

(g) off-days Kshs 196.80

**Total award Ksh. 90,315.80**

(h) Interest at Court rates from date of judgment till payment in full.

(i) Costs of the suit.

Dated and delivered at Nairobi this 21<sup>st</sup> day of April, 2022.

**MATHEWS N. NDUMA**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this judgment has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**

M/s Kariuki for claimant

Ekale – Court Assistant