



**Karani v Core Construction Limited (Cause 1292 of 2017)
[2022] KEELRC 4063 (KLR) (26 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 4063 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1292 OF 2017**

**M MBARÚ, J
MAY 26, 2022**

BETWEEN

SIMON KARANI CLAIMANT

AND

CORE CONSTRUCTION LIMITED RESPONDENT

JUDGMENT

1. The matter proceeded by way of formal proof after the respondent was served with summons on 22nd March, 2018 and failed to enter appearance or file any response.
2. In June, 2015 the claimant was employed by the respondent as a steel fixer where he worked until 21st September, 2016 at a wage of Ksh.21, 000 paid through his Mpesa.
3. On 20th September, 2016 the claimant left work after close of day and cleared with his supervisor. When he reported to work on 22nd September, 2016 the site manager sent him away without any explanation, notice or payment of his terminal dues.

The claim is for the following dues;

- a. Notice pay, Ksh.21,000;
- b. Annual leave pay Ksh.14,700;
- c. Overtime worked Ksh.3,675;
- d. Compensation;
- e. Certificate of service; and costs.



4. The claimant testified that he worked diligently for the respondent but his employment was unfairly terminated without being given any reasons, a hearing or notice or payment in lieu thereof. Such was unfair and the claims made should be awarded.

Determination.

5. The failure by the respondent to attend in these proceedings has denied the court crucial and material records with regard to the claimant's employment. The court is left with a single-sided case and shall rely on the available evidence and based on the applicable law.
6. On a claim for unfair termination of employment, Section 47 of the *Employment Act*, 2007 (the Act) places the burden of proving that an unfair termination of employment or wrongful dismissal has occurred on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal rest on the employer. Section 43 of the Act on the other hand requires the employer to prove the reasons for termination, and Section 45(2) (a) & (b) of the Act that requires an employer to prove that the reasons for termination were valid and fair reasons.
7. Ultimately, whether termination of employment is justified and with reasons, Section 41(2) of the Act obligates the employer to hear and consider any representations an employee may wish to make where summary dismissal is envisaged for fundamental breach of contractual obligation or gross misconduct; the respondent submitted that the appellant did not discharge its obligations under the Act.
8. Without any evidence by the respondent, there was no due process, justification or reasons leading to termination of the claimant's employment. This was unfair and unlawful.
9. The claimant is entitled to notice pursuant to Section 35 of the Act at Ksh.21, 000. And having worked from June, 2015 to September, 2016 a compensation of one month's gross wage is found appropriate all at ksh.21, 000.
10. On the claim for annual leave, the claim for Ksh.14, 700 is found reasonable and confirmed.
11. On the claim for overtime pay, the claimant outlined his work hours as being 0730hours to 1730hours. There are no work records to challenge these assertions and the claim for pay at ksh.4, 725 is confirmed. A certificate of service shall be issued.
12. Accordingly, judgement is hereby entered for the claimant against the respondent in the following terms;
 - a. Compensation ksh.21,000;
 - b. Notice pay Ksh.21,000;
 - c. Leave pay |Ksh.14,700;
 - d. Overtime pay ksh.4,725; and
 - e. Certificate of service.

DELIVERED IN COURT AT NAIROBI THIS 26TH DAY OF MAY, 2022.

M. MBARŪ

JUDGE

In the presence of:



Court Assistant: Okodoi
..... and

