



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mukilya v Sibed Transport Company Limited (Cause 356 of 2017)  
[2022] KEELRC 1296 (KLR) (7 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1296 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 356 OF 2017  
MN NDUMA, J  
JULY 7, 2022**

**BETWEEN**

**ANTHONY MAINGI MUKILYA ..... PLAINTIFF**

**AND**

**SIBED TRANSPORT COMPANY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. Suit was filed on 24/2/2017 by the claimant seeking the following reliefs:-
  - (a) A declaration that the Respondent's dismissal of the Claimant from employment was unlawful, unfair and inhumane.
  - (b) A declaration that the claimant is entitled to payment of his terminal dues and compensatory damages as pleaded.
  - (c) An Order for the Respondent to pay the Claimant his dues terminal benefits totaling to Kshs 1,046,750.
  - (d) Interest on (c) above from date of judgment until full payment.
  - (e) Costs of the suit plus interest thereon.
2. The suit proceeded ex parte, the respondent's advocate despite being present, having failed to participate in the hearing of the suit for lack of instructions to do so.
3. The claimant (C.W.1) testified and relied on his witness statement dated 20<sup>th</sup> January, 2017. C.W.1 testified that he was employed by the respondent as a mechanic on 8<sup>th</sup> August, 2010 at a monthly salary of Kshs 20,000. That he worked from 8 am to 4pm daily and did not proceed on leave.



4. That on May 23, 2016, whilst removing a lorry tyre to replace brake pads, and upon placing the tyre on the ground, it raised dust and the supervisor Mr. Kulmie who was standing nearby accused the claimant of disrespecting him by raising the dust and he summarily dismissed him from work.
5. Efforts to resolve the matter amicably through the Labour Office proved futile as the respondent ignored summons to attend conciliation meetings.
6. The claimant stated that there was no valid reason to dismiss him. He was not given a chance to defend himself nor notice of dismissal. That he was never issued with a termination letter and was not paid terminal benefits.
7. The claimant prays to be paid in lieu of leave days not taken for 5 years, House allowance for 5 years at 15% of the salary paid; service gratuity for 5 years and 9 months and unpaid public holidays for the entire period of 5 years.
8. The claimant prays to be compensated for the unlawful and unfair dismissal.

### **Determination**

9. This being undefended suit, the claimant has proved on a balance of probabilities that he worked for the respondent for a period of 5 years and 9 months and did not go on leave for the entire period. The Court finds that the claimant is entitled to payment in lieu of leave days not taken for 3 years. The rest of the claim is time barred.
10. The claimant had the onus of proving that he was entitled to and was not paid service gratuity and house allowance but he did not adduce any evidence to show why he was entitled to house allowance over and above the monthly salary paid. He also did not demonstrate that he was entitled to payment of service gratuity. The claims are dismissed for want of proof.
11. The claimant worked during public holidays and was not paid overtime. The Court awards him in respect of public holidays not taken for a period of 3 years calculated as follows (11 x 30 x Kshs 30,000 x 3 years x 2 (double rate) = 66,000.
12. With regard to the dismissal, the Court finds that the respondent violated Sections 36, 41, 43, 45 and 46 of the *Employment Act*, by dismissing the claimant summarily without notice; a notice to show cause; a hearing and nor any valid reason. The claimant had served the respondent diligently for 5 years; the claimant suffered loss and damage for the unlawful and unfair dismissal. The claimant did not contribute to the dismissal. The Court relies on the case of *Alloys Makau Maluwa -vs- Citi Trust Kenya Limited and Citi Bank Kenya Limited* ELRC Cause 951 of 2015 to find that the claimant is entitled to compensation equivalent to six (6) months' salary for the unlawful and unfair dismissal in the sum of Kshs (30,000 x 6) = 180,000. The claimant is also entitled to one month's salary in lieu of notice in the sum of Kshs 30,000 and a Certificate of Service.
13. In the final analysis, judgment is entered in favour of the claimant against the respondent as follows: -
  - (a) Kshs 180,000 in compensation for unlawful and unfair dismissal.
  - (b) Kshs 30,000 in lieu of one-month notice.
  - (c) Kshs 66,000 in respect of unpaid public holidays worked.
  - (d) Interest at Court rates from date of judgment till payment in full.
  - (e) Costs of the suit.



(f) Certificate of Service.

14. Execution of judgment is stayed for 30 days.

15. It is so ordered.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 7<sup>TH</sup> DAY OF JULY, 2022.**

MATHEWS N. NDUMA

JUDGE

Appearances

M/s Omamo for Claimant

M/s Kyalo for respondent

Ekale – Court Assistant

