



REPUBLIC OF KENYA



KENYA LAW
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Muhanji v Bhaga (Cause 948 of 2016)
[2022] KEELRC 13330 (KLR) (30 November 2022) (Judgment)

Neutral citation: [2022] KEELRC 13330 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 948 OF 2016
J RIKA, J
NOVEMBER 30, 2022

BETWEEN

AITON MATONYE MUHANJI CLAIMANT

AND

SHASHIKANT JAGJIVAN BHAGA RESPONDENT

JUDGMENT

1. This claim was received at the court's registry on May 23, 2016.
2. The claimant was heard before Hon Justice Byram Ongaya, and called 2 other witnesses, on December 3, 2019.
3. The respondent's case was scheduled to be heard on April 13, 2020 for 15 minutes.
4. The trial judge was transferred to Mombasa before finalization of the hearing, and the undersigned judge took over from where the transferred judge left off.
5. The respondent's case was scheduled for hearing on November 11, 2021 when the respondent did not attend court. It was rescheduled for hearing on February 24, 2022, when again the respondent was absent.
6. The court granted the respondent a last chance to give evidence on June 10, 2022. The court ordered service of the hearing notice to be effected upon the respondent personally, and on the advocates on record for the respondent. An affidavit of service sworn by Process-Server, Adrian Mwiti Kirigu, on March 21, 2022, indicates that the order on service was acted upon.
7. On June 10, 2022, the respondent and his advocates did not attend court. It was ordered that the respondent's case is closed, and parties to file and exchange final submissions within 14 days apiece.



8. The respondent was again served with the final submissions filed by the claimant, but did not file any submissions.
9. In brief, the claimant's position is that he was employed by the respondent as a night watchman, on or about August 2003. His first salary was Kshs 3,000 monthly.
10. He worked until April 2014, when the respondent terminated his contract unfairly and unlawfully, and refused to pay the claimant terminal benefits. He pleads that throughout his salary was underpaid. He was denied annual leave and house allowance. He was not paid service. He asks the court to find that termination was unfair and grant to him, equivalent of 12 months' salary in compensation for unfair termination. In total, he pleads an amount of Kshs 714,104.
11. The respondent filed a statement of response on June 23, 2016, which is in the nature of general denial. The respondent makes blurred statements, such as, " That respondent denies, that the claimant was allegedly not issued with an appointment letter, and the claimant is put to strict proof thereof." In responding to a demand letter issued on behalf of the claimant by Kituo Cha Sheria, the respondent continued to assert that it did not issue a letter of appointment to the claimant, and that any money he may have received from the respondent, was "only a token of appreciation, made to keep hangabouts, away from the respondent's premises." This sort of pleading is condescending, and does little to advance the respondent's position, or to discount the averments by the claimant. The general denials, coupled with lack of evidence from the respondent, leave the court with no doubt that the claimant has established his claim, to the required standard. He has shown that his contract was unfairly terminated, as required under section 47[5] of the Employment Act. He has shown that he was not taken through a fair procedure, and given valid reason, to justify termination, as required under sections 41, 43 and 45 of the Employment Act 2007. The respondent did not give evidence at all, to justify termination. Prayers for underpayment and service pay, are well founded under the Regulation of Wages [Protective Security Services] Order 1998. The other prayers are well-anchored under the Employment Act, 2007.
12. It was acknowledged in the demand letter by Kituo Cha Sheria, dated July 16, 2015, that the claimant was paid Kshs 21,000 by the respondent. The court shall allow the claim at Kshs 714,104, less Kshs 21,000 received by the claimant – total Kshs 693,104.
13. Costs to the claimant.
14. Interest allowed at court rate, from the date of judgment, till payment is made in full.

In Sum it is Ordered: -

- a. The respondent shall pay the claimant a total amount of Kshs 693,104 in terminal benefits and compensation for unfair termination.
- b. Costs to the claimant.
- c. Interest granted at court rate, from the date of judgment, till payment is made in full.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 30TH DAY OF NOVEMBER 2022.

JAMES RIKA
JUDGE

