



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAKURU**

**ELRC CAUSE 19 OF 2018**

**PETER NDIRIE NGERE.....CLAIMANT**

**-VERSUS-**

**CREC NO.10 ENGINEERING GROUP CO. LTD.....RESPONDENT**

**JUDGMENT**

1. The Claimant herein by an Amended Memorandum of Claim filed in Court on 31<sup>st</sup> January 2019, sued the Respondent seeking compensation for alleged unfair termination.

2. The Claimant stated that he was employed by the Respondent sometimes in July, 2016 as a security guard earning a daily wage of Kshs.700/- with a cumulative salary of Kshs.21,000/- per month.

3. He states that under the terms and conditions of service, the Respondent was obligated to give one-month Notice before termination or in the alternative the Respondent was to pay one-month salary in lieu of Notice.

4. He averred that he was dismissed from the Respondents employment sometime in January, 2018, verbally without any notice.

5. That the Respondent was issued with a demand letter and the notice of intention to sue but refused to make good the claimant claim.

6. The Claimant therefore prays for the following reliefs;-

**a) A declaration that the termination was unlawful**

**b) An order that the claimant be paid his dues and benefits of Kshs.312,200/- being;**

**i. Service pay of Kshs 10,500/-**

**ii. One month salary in lieu of Notice of Kshs 21,000/-**

**iii. Compensation for loss of earnings of Kshs.252,000/-**

**iv. Leave allowance f Kshs 14,700/-**

**v. Holiday of Kshs 14,000/-**

**c) General damages**

**d) Costs of claim and interest.**

7. The Respondent was served with the Summons together with the pleadings in this claim as evidence in the Affidavit of service filed in Court on 13<sup>th</sup> March, 2019. Despite service the Respondent failed to enter Appearance and or defend this suit which therefore proceeded as undefended claim.

8. The claim herein proceeded for formal proof hearing on the 10<sup>th</sup> June, 2021 where the Claimant **Peter Ndirie Ngere(CW-1)** sought to adopt his witness statement of 22<sup>nd</sup> November, 2018 which in summary was that he was employed by the Respondent in July, 2016 earning a daily wage of Kshs 700/- and a monthly salary of Kshs. 21,000/-. That he worked for the Respondent for 1 year 7 months when his services were terminated in January, 2018 without any Notice or justification or payment of terminal dues.

9. He contends that it was a term of employment that upon termination, the Respondent could give the claimant one month notice or pay one month salary in lieu of Notice which was not adhered to. He thus testified that his services were unfairly terminated and prayed for the claim to be allowed as prayed.

10. The Claimant also produced the list of documents being demand letter from his advocates to the Respondent, a job card sheet and a letter to the ministry of Labour addressed to the Respondent with regard to the termination of the Claimant's services.

11. The Claimant closed his case and opted not to file any submissions.

12. I have examined the evidence of the claimant herein. From the memo of claim filed, the claimant sued China Railway No. 10 Group Co. Ltd and summons were received and served upon the Secretary one Emma Matoke on 8/2/2018.

13. Vide an application dated 2/11/2018 the claimant sought to amend the claim by substituting the name of the respondent to Crec No. 10 Engineering Group Co. Ltd.

14. This amended claim was served upon the Project Manager of the intended respondent Mr. Zang by his secretary Yvonne.

15. The respondents didn't respond to the amended claim. The court directed that the matter proceeds for formal proof.

16. The claimant has produced documents in court showing that he was an employee of the respondent as per Job Card. He was not issued with an employment letter as the law expects. It is not clear how he was terminated but it is evident he worked for the respondent.

17. The respondent having failed to submit any evidence, the evidence of the claimant remain uncontroverted.

18. I therefore find for the claimant and I enter Judgment for him as follows;

**1. I month salary in lieu of notice 21,000/=**

**2. Service pay for 1 year = 15 days salary for the one year worked = 10,500/=**

**3. Leave for 1 year at 21 days**

**=  $21/30 \times 21,000 = 14,700/=$**

**4. Compensation for unfair termination equivalent to 7 months salary =  $7 \times 21,000 = 147,000/=$**

Dated and delivered virtually this 28<sup>TH</sup> day of SEPTEMBER, 2021.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

No appearance for parties

Court Assistant - Fred