



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 1270 OF 2016

LEONARD UMA ASEGA.....CLAIMANT

VERSUS

RABADIYA CONSTRUCTION COMPANY LIMITED AND MR. MANU..... RESPONDENT

JUDGMENT

1. The suit filed on 29th June, 2016 by the claimant seeks an order in the following terms:-

- (i) Declaration that the dismissal of the claimant was wrongful and unfair.**
- (ii) Claimant to be paid terminal benefits including (a) Kshs 8,500 being salary for 8 days worked in December, 2015.**
- (iii) One months' salary in lieu of notice – Kshs 10,400.**
- (iv) 30 months unpaid house allowance at Kshs 1560 per month – Kshs 46,800.**
- (v) Two months' salary in lieu of two(2) years leave entitlement not taken – Kshs 20,800**
- (vi) Service pay – Kshs 8,500.00**
- (vii) Compensation for the unlawful termination being equivalent of 12 months' salary.**
- (viii) Costs of the suit.**

2. The suit was served and M/s S.M. Righa & Co. Advocates entered appearance for the Respondent on 21/2/2020.

3. The respondent did not file a statement of response to the Statement of Claim. The suit proceeded as undefended suit.

4. The claimant filed sworn witness statement in support of the statement of claim and also filed written submissions in support thereof.

5. The evidence adduced by the claimant is to the effect that he was employed by the respondent in November, 2014, verbally, at a monthly salary of Kshs 10,400. That he worked as a General Labourer. That he was not issued with a written contract. That he was not paid house allowance and was not housed. That he worked daily including weekends, and public holidays from 7.00 am to 5.00 p.m. That he worked diligently and honestly. That the respondent did not make any statutory contributions on his behalf including National Social Security Fund (NSSF) and National Hospital Insurance Fund (NHIF).

6. That one Mr. Manu informed the claimant upon reporting to work on 18/6/2016, that the claimant was dismissed from employment.

7. That the claimant was not notified of the intended dismissal; was not given a notice to show cause nor was he given a hearing before he was summarily dismissed from work.

8. That the claimant was not paid terminal benefits upon termination of his employment. That the claimant suffered loss and damages as a result of the termination.

9. The suit being undefended, the claimant has proved on a balance of probabilities that the termination of his employment was for no valid reason and violated Section 36, 41, 43 and 45 of Employment Act, 2007 in that the claimant was not given any notice; was not heard and was not given any valid reason for the termination.

10. The Court returns the finding that the termination of the employment of the claimant was unlawful and unfair and the claimant is entitled to compensation in terms of Section 49(1) (c) and 4 of the Employment Act, 2007.

11. In this regard, the claimant had faithfully served the respondent for a period of about two (2) years. The claimant was underpaid; and worked overtime without pay. The claimant did not contribute to the termination. The claimant was not paid salary for days worked and other terminal benefits upon termination.

12. The claimant has proved he was entitled to and not paid.

(a) 8,500 salary for 18 days worked in December, 20115.

(b) One month salary in lieu of notice Kshs 10,400.

(c) Kshs 46,800 being house allowance for 30 months.

(d) Kshs 20,800 in lieu of two months untaken leave and

(e) Kshs 8,500 being service pay for the period served.

13. The Court enters judgment accordingly in favour of the claimant.

14. In addition the claimant is awarded compensation equivalent to 3 months' salary for the unlawful and unfair dismissal in the sum of Kshs 31,200. The Court has considered the case of **Dorothy Asina Atela –vs- Henkel Chemical (E.A.) [2015] eKLR** in arriving at this decision.

15. In the final analysis, judgment is entered in favour of the claimant against the respondent in the sum of **Kshs 125,400**. The amount is payable with interest at Court rates from date of judgment till payment in full. Costs to follow the event.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 21ST DAY OF OCTOBER, 2021.

MATHEWS N. NDUMA

JUDGE

Appearances

Bikambo & Co. Advocates for the claimant

S.M. Righa & Co. Advocates for the Respondent

Ekale – Court Assistant