



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT UASIN GISHU

COURT NAME: ELDORET LAW COURT

CASE NUMBER: ELRC.C/292/2017

CITATION: SAMUEL MURAMBA OMUTANYI VS JIANGXI ZHONGMEI ENGINEERING CONSTRUCTION (K) CO. LTD

JUDGMENT

ON 2021-11-05 BEFORE HON. JUSTICE J. N. ABUODHA

JUDGEMENT

1. The Claimant pleaded that he was at the material time employed by the respondent as a general labourer. He worked from 16th October, 2013 to 18th October, 2014 when the respondent unlawfully and without any justifiable reason terminated his service and refused to pay him his terminal dues.
2. The Claimant further averred that the respondent without compliance with section 40 of the Employment Act n purported to terminate his service and issue him with a certificate of service confirming he worked for the respondent from 16th October, 2013 to 18th October, 2014.
3. The Claimant averred that his termination was unlawful because his Union was not informed of the intention to declare him redundant, no leave pay was given and no one month salary in lieu of notice was paid.
4. He further stated that the respondent grossly underpaid him contrary to the prevailing Regulations of Wages Order and that he worked during rest days and public holidays without pay.
5. The respondent in response to the claim pleaded that the Claimant has never been its employee as alleged and that he worked for the respondent between 16th October, 2013 to 18th October, 2014.
6. The allegations that the respondent unlawfully terminated the Claimants employment and refused his dues were false as the Claimant had never been an employee of the respondent.
7. In the alternative the respondent stated that if at all the Claimant was its employee which was denied he was summarily dismissed for gross misconduct as stipulated by law. The respondent denied the Claimant was underpaid, was not given a fair hearing and further stated that the Claimant was paid all his dues upon termination.
8. At the hearing only the Claimant and his advocate were present hence the matter proceeded ex parte.
9. In his oral evidence the Claimant stated inter alia that he adopted his witness statement filed with the claim as his evidence in chief and further stated that he was suddenly stopped from working and that he was not given any notice or reason. It was his evidence that they were working on a road construction project and were just told there was no more work. They were issued with certificate of service.
10. During the period he worked he used to sign in. This was done on their behalf by the Foreman.
11. He denied doing anything wrong and that he was summarily dismissed. He further stated that his salary per month was Kshs. 8,000/=. He neither housed or paid house allowance.
12. It is a cardinal rule of evidence that whoever makes any allegation against the other must prove those allegations to the requisite standard of proof if the Court is to believe them and enter judgement in their favour.
13. The Claimant herein pleaded that his services were terminated contrary to section 40 of the Employment Act implying he was declared redundant but, in a manner, not stipulated under the Act. He further stated during his oral testimony that they were working on a road construction project and that they were called and told that there was no more work and issued with certificates of service. It is therefore

highly likely that the road construction project came to completion hence the Claimant as a general worker in the project was laid off.

14. A termination on account of redundancy if not done as provided in the Employment Act amounts to unfair termination as provided under Section 45 of the Employment Act.

15. As observed earlier the respondent though filed a defence never filed any documents to counter the Claimant's allegations. Further they never attended Court to cross-examine the Claimant.

16. However, this did not exonerate the Claimant from discharging the burden of proof cast upon him by law.

17. The Claimant alleged he worked overtime and during rest days and public holidays but did not lead any evidence to support these allegations. The Claimant ought for instance to have informed the Court of the nature of his work with the respondent that compelled him to work overtime and without going on off.

18. The Claimant further claimed he was underpaid but failed to exhibit the relevant Wage Order he was relying on to support this allegation. The foregoing heads of claim therefore remain largely unproved to the required standards.

19. The procedure for termination of employment on account of redundancy is provided for under section 40 of the Employment Act. It includes informing the employee's Union where applicable and Labour office in charge of the area. Further terminal benefits are to be paid as per the CBA where there is one, leave dues to be paid in cash, one month's salary in lieu of notice and further such employee should be paid severance pay at the rate of not less than 15 days wages for each completed year of service.

20. The respondent did not present their evidence to show that they followed the provisions of Section 40 when declaring the Claimant and his co-workers redundant.

21. The court will therefore award the Claimant as follows:

KSHS

- (a) One month's salary in lieu of notice 8,000
- (b) Accrued leave for one year at one month's salary 8,000
- (c) Severance pay for one year completed 4,000
- (d) Three month's salaries for unfair termination 24,000 44,000
- (e) Costs of the suit.

22. It is so ordered.

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SIGNED BY: HON. JUSTICE J. N. ABUODHA (ADMINISTER JUSTICE)

THE JUDICIARY OF KENYA.

ELDORET ELRC

EMPLOYMENT AND LABOUR RELATIONS COURT

DATE: 2021-11-27 10:40:37