



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT MOMBASA**

**CAUSE NO. 246 OF 2018**

**ABEDNEGO NDUNDA MAITHA.....CLAIMANT**

**- VERSUS -**

**ROAD HAULAGE EXPRESS LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 10<sup>th</sup> December, 2021)

**JUDGMENT**

The claimant filed the memorandum of claim on 17.04.2018 through Ngonze & Ngonze Advocates. The claimant's case is that he was in continuous respondent's employment from 23.02.2016 to 28.10.2017 as a driver. His monthly pay was Kshs. 30, 000.00 and he performed with dedication, no supervision and had good working relationship. His further case is that he has a clean record of service with no warning letters but he was unfairly and wrongfully terminated abruptly without warning and no reason was given. He claims:

- a) One-month salary notice payment Kshs. 30, 000.00.
- b) Unpaid leave Kshs. 48, 461.00.
- c) Public holidays Kshs. 18, 462.00.
- d) Unpaid overtime Kshs. 27, 692.00.
- e) Maximum compensation for wrongful and unfair dismissal under section 49 and 50 of the Employment Act, 2007 Kshs. 360, 000.00.
- f) Certificate of service.
- g) Costs of the cause.
- h) Interest on a, b, c, d, e, and e above from the date of filing the suit till full payment.

Despite service of the memorandum of claim, the summons, mention notices and hearing notice, the respondent failed to enter appearance, to file a response to the claim, or to attend Court. The claimant testified to support his case.

To answer the **1<sup>st</sup> issue** the Court returns that the parties were in a contract of service and the respondent employed the claimant as a driver from 23.02.2016 to 28.10.2017 at Kshs. 30, 000.00 per month.

To answer the **2<sup>nd</sup> issue** the Court returns that on 28.10.2017 the claimant reported at work and he was terminated upon no reason.

To answer the **3<sup>rd</sup> issue** the Court returns that as the respondent gave no reason for termination, the termination was unfair under section 43 and 45 of the Employment Act, 2007. The claimant is awarded one month pay in lieu of the termination notice per section 35 of the Act **Kshs. 30, 000.00**. The Court has considered the factors in section 49 of the Act. The claimant had served for only over a year. He had a clean record of service. He had not contributed to his termination from employment. In such circumstances the Court considers that 2 months' pay for unfair termination will meet ends of justice **Kshs. 60, 000.00**. The claimant offered no evidence to support the other claims for overtime, leave and public holidays. The Court finds that they remained empty allegations and they are declined. He is entitled to a certificate of service per section 51 of the Act.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- 1) The declaration the termination was unfair for want of a valid and fair reason per section 43 and 45 of the Act.
- 2) The respondent to pay the claimant **Kshs. 90, 000.00** by 01.02.2022 failing interest to be payable thereon at Court rates from the date of this judgment till full payment.
- 3) The respondent to deliver the certificate of service by 01.02.2022.
- 4) The respondent to pay costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 10TH DECEMBER, 2021.**

**BYRAM ONGAYA**

**JUDGE**