



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT UASIN GISHU

COURT NAME: ELDORET LAW COURT

CASE NUMBER: ELRC.C/286/2017

CITATION: NICODEMUS KIPRENCHA CHEBASI

VS

JIANGXI ZHONGMEI ENGINEERING CONSTRUCTION CO. LTD

JUDGMENT

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

1. The Claimant pleaded that he was employed by the respondent as a General Labourer and that he worked for the respondent from 8th July, 2013 to 19th December, 2014 when the respondent unlawfully and without justification terminated his service and refused to pay his terminal dues.
2. According to the Claimant the termination was unlawful because his union was not informed of the intention to declare him redundant, no leave pay was given, one monthly salary in lieu of notice was not paid and so was severance pay.
3. The respondent filed a memorandum of response in which it averred that the Claimant was never its employee hence it could not unlawfully terminate his service. In the alternative the respondent stated that if at all the Claimant was its employee, he was summarily dismissed for gross misconduct which was done in accordance with the law.
4. The respondent further denied underpaying the Claimant, not giving him a fair hearing. The respondent also pleaded that upon termination the Claimant was paid all his dues.
5. When the matter came up for hearing only the Claimant and his Counsel attended.
6. In his oral evidence he stated that he would adopt his written statement filed with the claim. It was his evidence that the respondent was a road contractor and that he was employed on 8th July, 2013 and left employment on 23rd December, 2014. According to him they were building a road and were not told when the project would end. They were just told work was finished. During the period he worked for the respondent, they registered whenever they reported to work.
7. The Claimant pleaded that his service was terminated on account of redundancy but this was not done in accordance with the provisions of the Employment Act. He further stated that they were working on a road project but were never told when the project would end. They were suddenly told work was over and issued with certificates of service.
8. It is a settled rule of civil litigation that a person who makes allegation against another must prove those allegations to the required threshold of the Court is to believe them and enter a judgement in their favour.
9. The Claimant alleged that his service was terminated on account of redundancy however the respondent never informed his Union, never paid his accrued leave and one month salary in lieu of notice.
10. The respondent never filed any documents to rebut the Claimant's allegations. Further the respondent failed to attend court to cross examine the Claimant over his allegations.
11. However, omission by the respondent to file documents to counter Claimant's allegations did not lessen the burden cast upon him by law.

12. The Claimant alleged he worked overtime and during rest days and public holidays but did not lead any evidence to support the allegation. The Claimant could for instance have led evidence on the nature of the work he was doing that compelled him to work overtime and forfeiting his rest days.

13. The Claimant further claimed he was underpaid but did not produce the relevant Wage Order to vouch for this allegation. These heads of claim remained unproved to the required standards.

14. Section 40 of the Employment Act requires that before an employee is terminated on account of redundancy where applicable his union ought to be informed of the intended redundancy and further all leave accrued must be paid and not less than one month's salary should be paid. The employee affected is also entitled to not less than 15 days wages for each completed year of service.

15. The respondent did not present any evidence to refute the allegations that they did not follow the law in declaring the Claimant redundant.

16. The Court will therefore award the Claimant as follows:

(a) One month's salary in lieu of notice 16,870

(b) One month's salary on account of leave 16,870

(c) Severance pay for one complete year 8,435

(d) Three months salary for unfair termination of service 50,610

92,785

(e) Costs of the suit

17. It is so ordered.

GIVEN UNDER MY HAND AND SEAL OF THIS COURT ON 2021-12-01 11:38:44

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

THE JUDICIARY OF KENYA.

ELDORET ELRC

EMPLOYMENT AND LABOUR RELATIONS COURT

DATE: 2021-12-01 11:38:44