



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1277 OF 2015

CYRUS MANGALA ASHIONO.....CLAIMANT

VERSUS

GIRIRAJ CONSTRUCTION COMPANY.....RESPONDENT

(Before Hon. Justice Hellen S. Wasilwa 27th February, 2020)

JUDGEMENT

1. Vide his Statement of Claim dated 7th July, 2015 and filed in Court on 27th July, 2015, the claimant avers that he was wrongfully dismissed from his employment with the Respondent and the subsequent failure by the Respondent to pay his terminal dues and other monies owed to him at the time of his separation.

2. The Claimant's case is that he was employed by the Respondent, a Limited Liability Company on or about 12th January, 2015 in the position of a joinery at a monthly salary of Kshs. 19,200/-.

3. The Claimant averred that he worked diligently and to the Respondent's satisfaction during the entire period he was employed by the Respondent (5 Months) until 26th May, 2015 when he reported on duty and at around 2 pm was informed that his services were no longer required by the Respondent. He further contended that no reason was given for the sudden termination.

4. The Claimant further contended that his verbal termination was done contrary to the principles of natural justice and Section 41 of the Employment Act, 2007.

5. Aggrieved by the Respondent's decision to terminate his services the Claimant filed the instant Claim seeking the following reliefs:-

a) A declaration that the Claimant's dismissal was wrongful and unfair.

b) The Claimant be and is hereby paid terminal benefits comprising of the following:-

i.. May Salary ***Kshs. 19,200/-***

ii. One month's salary in

lieu of notice ***Kshs. 19,200/-***

iii. Prorata leave for 5 months ***Kshs. 9,000/-***

iv. 12 months compensation ***Kshs. 249,600/-***

v. House allowance ***Kshs. 15,600/-***

Total ***Kshs. 312,600/-***

c) The Respondent be and are hereby ordered to compensate the Claimant equivalent to 12 month's salary

d) The Respondent to pay costs.

6. The Respondent though served with the Claim and the summons filed in this matter failed to enter appearance and file its defence. The matter therefore proceeded as an undefended Claim on 2nd December, 2019 with the Claimant testifying on his own behalf.

Claimant's Case.

7. In his evidence in chief the Claimant, CW1 sought to have his witness statement filed in Court on 27th July, 2015 adopted by this Honourable Court, a request that was allowed by the Court. In his statement, CW1 reiterated the averments made in the Statement of Claim.

8. CW1 further testified that his salary was Kshs. 800/- per day payable weekly, he further testified that he worked for the Respondent for a continuous period of 5 months prior to his verbal termination.

9. CW1 urged this Honourable Court to allow his Claim as prayed in the Statement of Claim.

Submissions by the Claimant

10. It is submitted by the Claimant herein that his termination was unfair as the same was done contrary to the provisions of Sections 35, 41, 43 and 45 of the Employment Act, 2007.

11. The Claimant further submitted that he is entitled to the reliefs sought in his Claim as pleaded and urged the Court to allow the same as prayed.

12. I have examined all the evidence and submissions presented by the claimant herein.

13. Despite the fact that the Claimant stated that he was employed by the Respondent, he gave no proof of such an employment relationship. No witness was called to substantiate his case. No evidence of any payments he alleges he was paid by the Respondent was submitted too.

14. In this Court's view, the Claimant has failed to prove the existence of an employment relationship with the Respondent and therefore the entire claim fails accordingly.

Dated and delivered in open Court this 27th day of February, 2020.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties