



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU

CAUSE NO.11 OF 2018

BERNARD MURIITHI WANJIRA.....CLAIMANT

VERSUS

CREC NO.10 ENGINEERING GROUP CO. LIMITED....RESPONDENT

JUDGEMENT

The claimant filed the Memorandum of Claim on 23rd January, 2018 and amended the same on 15th November, 2018. The respondent was served and returns filed but there was no appearance or defence filed. The claimant was heard on his claim,

The claim is that in July, 2016 the claimant was employed by the respondent as a casual labourer and paid a daily wage of Ksh.411 all paid monthly at Kshs. 12,330.

On 30th March, 2017 the respondent verbally terminated employment of the claimant by summary dismissal. There was no notice, reasons or payment of terminal dues.

The claim is that there was unlawful and unfair termination of employment, the claimant had not taken annual leave and is seeking the following terminal dues;

- a) One-month payment in lieu of notice Kshs. 12,330;
- b) Compensation Kshs. 36,990;
- c) Leave at Kshs. 2,466; and
- d) Costs.

The claimant testified in support of his claims. Upon employment he worked continuously and on 30th March, 2017 he reported to work as was practice but he was told by the respondent there was no work. There was no prior notice.

As noted above, there was no defence filed. Without appearance, the claimant closed his case without defence or work records.

Section 35, 41 and 43 of the Employment Act, 2007 read together with section 40 of the Act requires the employer to issue the employee notice before termination of employment. Even where such notice is issued the employer must give the reasons leading to termination of employment even where such relates to work reorganisation, redundancy or other matter/reason(s). The employer must be given a hearing.

Where the employer fails to abide the above provisions, termination of employment is unfair under section 45 of the Employment Act, 2007. In this case, without a defence, the court is denied any evidence to challenge the claims made.

The claimant is entitled to notice pay at Kshs. 12,330 and compensation is due under section 49 of the Employment Act, 2007 and for the period of employment, 3 months' gross pay is hereby found appropriate all at Kshs. 36,990.

On the claim for leave pay, without any work records to challenge the claim made, leave pay is due at Kshs. 2,466.

The claimant in the written submission has claimed for service pay and general damages for alleged breach of Article 50 of the constitution, 2010. However, these matters were not pleaded. Even where there was no defence filed, these claims cannot be introduced at the submission stage without pleading.

Accordingly, judgement is hereby entered for the claimant against the respondent in the following terms;

a) Award of compensation at Kshs. 36,990;

b) Notice pay Kshs. 12,330;

c) Leave pay Kshs. 2,466;

d) Costs of the suit.

Delivered at Nakuru this 20th day of February, 2020.

M. MBARU

JUDGE

In the presence of: