



**REPUBLIC OF KENYA**

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

**CAUSE NO 761 OF 2017**

**PATRICK KALU LEWA.....CLAIMANT**

**VS**

**MACKENZIE MARITIME E.A. LTD.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. By a Memorandum of Claim dated 21<sup>st</sup> September 2017 and filed in court on even date, the Claimant seeks compensation for unlawful termination of employment.
2. The Respondent filed a Response on 3<sup>rd</sup> November 2017 to which the Claimant responded on 21<sup>st</sup> November 2017.
3. When the matter came up for hearing, the Claimant testified on his own behalf and the Respondent called its Human Resource Manager, Lily Phidiliah Wanjughu Mwasho. The parties also filed written submissions.

**The Claimant’s Case**

4. The Claimant states that he was employed by the Respondent as a Driver from 1<sup>st</sup> July 2013 until 4<sup>th</sup> February 2016. He earned a monthly salary of Kshs. 29,070.
5. The Claimant claims that on 4<sup>th</sup> February 2016, he reported to work as usual but his employment was terminated verbally.
6. The Claimant’s case is that the termination of his employment was unlawful and unfair as there was no valid reason for it and he was not allowed an opportunity to be heard. His claim is as follows:

- a) One month’s salary in lieu of notice.....Kshs. 29,070
- b) Leave pay for 2 years.....46,956
- c) Service pay @ 15 days’ for every completed year.....11,180
- d) 12 months’ salary in compensation.....348,840
- e) Overtime worked for 2 years.....222,400
- f) Public holidays.....16,149
- g) Certificate of service
- h) Costs plus interest

**The Respondent’s Case**

7. In its Response dated 3<sup>rd</sup> November 2017 and filed in court on the same date, the Respondent states that the Claimant was engaged as a

Driver on contractual basis from 1<sup>st</sup> July 2013 until 3<sup>rd</sup> October 2013.

8. The Claimant was re-engaged in the same position from 1<sup>st</sup> September 2014 until 31<sup>st</sup> August 2015 and subsequently from 1<sup>st</sup> September 2015 until 30<sup>th</sup> November 2015. From 1<sup>st</sup> November 2015, the Claimant was promoted to the position of Designated Driver.

9. The Respondent avers that upon the lapse of his contract on 30<sup>th</sup> November 2015, the Claimant was by letter dated 3<sup>rd</sup> February 2016, informed of the Respondent's decision not to renew the contract. The Claimant's final dues were tabulated but the Claimant failed to pick his last cheque and letter of discharge.

### **Findings and Determination**

10. There are two (2) issues for determination in this case:

- a) Whether the Claimant has made out a case of unlawful termination of employment;
- b) Whether the Claimant is entitled to the remedies sought.

### **Unlawful Termination?**

11. The Respondent's defence to the Claimant's claim is that the Claimant was employed on fixed term contracts and that his employment came to an end upon expiry of the last such contract.

12. The Respondent's Human Resource Manager, Lily Phidiliah Wanjughu Mwasho however told the Court that the Claimant worked until 3<sup>rd</sup> February 2016. From the record, the Claimant's last contract was to end on 30<sup>th</sup> November 2015. It is therefore evident that the Claimant continued to work after expiry of the said contract.

13. The Respondent did not bother to explain under what circumstances the Claimant continued to work beyond 30<sup>th</sup> November 2015. The only inference I will draw is that the Claimant's contract was renewed by conduct of the parties and the Respondent's defence that the Claimant's employment came to an end by effluxion of time cannot stand.

14. In the circumstances, I find that the Respondent's letter to the Claimant dated 3<sup>rd</sup> February 2016 by which the Respondent purported to notify the Claimant of the decision not to renew his contract came late in the day. As a result, the said letter which came two months after the expiry date of the last contract cannot serve as a legitimate mode of termination of employment.

15. Ultimately, I find and hold that the Respondent terminated the Claimant's employment without valid reason and in defiance of due procedure. The Claimant is thus entitled to compensation.

### **Remedies**

16. In the result, I award the Claimant six (6) months' salary in compensation. In arriving at this award, I have taken into account the Claimant's length of service as well as the Respondent's conduct in the termination transaction.

17. I further award the Claimant one (1) month's salary in lieu of notice.

18. No evidence was adduced to support the claims for overtime and public holidays which therefore fail and are dismissed.

19. The claims for leave pay and service pay were abandoned at the trial.

20. Finally, I enter judgment in favour of the Claimant as follows:

- a) 6 months' salary in compensation.....Kshs. 174,420
- b) 1 month's salary in lieu of notice.....29,070
- Total.....203,490**

21. This amount will attract interest at court rates from the date of judgment until payment in full.

22. The Claimant is also entitled to a certificate of service plus costs of the case.

23. Orders accordingly.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 20<sup>TH</sup> DAY OF FEBRUARY 2020**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

**Mr. Ngonze for the Claimant**

**Mr. Otieno for the Respondent**