



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 437 OF 2014

GAMARIGI LIVEMBAZI BENSON.....CLAIMANT

VERSUS

ENDMOR STEEL MILLERS LIMITEDRESPONDENT

J U D G E M E N T

1. The Claimant alleged he was employed by the respondent in July, 2012 as a general worker and worked continuously until 20th January, 2014 when he was asked by the respondent's Senior Supervisor Mr. Soita to stop working at around 6.00 pm and resume the next day. Ordinarily the Claimant worked until around 7.00 pm.
2. On reporting to work on 21st January, 2014 the Claimant found his work position had been taken over by a new employee. On asking Mr. Soita why he was replaced, the Claimant was advised to address his queries to the respondent's production manager Mr. Singh.
3. According to the Claimant when he reported to Mr. Singh as advised by his supervisor, Mr. Singh advised him that he had been dismissed and no reason or explanation was given.
4. The respondent on his part stated that the Claimant was a casual worker contracted on from time to time on need basis at a daily wage of Kshs. 471. According to the respondent, the Claimant was informed when manual tasks got exhausted and was informed the respondent would look for him if work became available.
5. In his oral evidence he stated that he was a general worker and worked continuously at Kshs. 800 per day. It is further his evidence that he was not given any reason for the termination of his service and that he had done nothing wrong.
6. From the pleadings and the Claimant evidence it was not disputed that he was engaged by the respondent as a general worker and further that he worked from July, 2012 to 20th January, 2014. According to the respondent however the Claimant's services were contracted from time to time on need basis.
7. The respondent however, a part from the mere plea that the Claimant's services were hired on need basis never attended Court to present evidence to support the allegation.
8. The Claimant though may have been a casual worker had served the respondent for a period of more than a month hence the termination of his service ought to have been as if he was a regular employee. That is to say he was entitled to notice of termination and reasons for such termination. The respondent never attended Court hence the Court does not have the evidence from the respondent perspective.
9. The Court will therefore believe the Claimant's version of the dispute and find that the termination of his service was unfair and award him as follows: -

Kshs.

a. One-month salary in lieu of notice 24,000

b. Four months' salary as compensation

For unfair termination. 96,000

120,000

c. Costs of the suit

Dated at Nairobi this 13th day of March, 2020

Abuodha Jorum Nelson

Judge

Delivered this 13th day of March, 2020

Byram Ongaya

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.