



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO 2216 OF 2014

TIMOTHY MUSYOKI MUNYAOCLAIMANT

VERSUS

TECHNOCONSTRUCT (K) LTD.....RESPONDENT

JUDGEMENT

1. The Claimant averred that he was at all material times employed by the respondent in February, 2013 as a steel fixer at a daily wage of Kshs. 700/=. He used to report to work at 7.30 am and work until 5.00 pm.
2. On 4th August, 2014 he was summoned by the Company's designer Mr. Islim and told there is was no more work for him and that he was required to go back home and would be recalled. According to the Claimant, despite being told there was no work, other employees continued to work uninterrupted and the Claimant ws never recalled as he was told. He was further not paid his terminal dues. The Claimant complained that the abrupt stoppage of work was unfair and inhuman and no due process was followed before he was stopped.
3. The respondent on its part stated that it never employed the Claimant but rather the Claimant was casual worker earning a daily wage without any guarantee or obligation from the respondent. The respondent denied that the Claimant was entitled to compensation as computed in the statement of claim.
4. When the matter came up for hearing only the Claimant attended Court and testified. He maintained that the respondent employed him in February, 2013 and he worked until August,2014 and that he used to report to work at 7.30 am and work until 5,00 pm and that he was paid Kshs. 700 per day.
5. According to him he was never issued with a letter of appointment and that they used to register every day as they reported. He further stated that the Company designer called him and told him there was no more work and that he should go home and would be called when more work comes upon but was never called.
6. During the period he worked he worked during public holidays and used to do 21/2 hours of overtime without pay. It ws further his evidence that he was never registered with NSSF.
7. The burden of proof that an unfair termination has occurred is usually on the employee while proof of reasons for termination is on the employer. Failure or omission to discharge their legal burden does not absolve the other party from discharging theirs.
8. Although the respondent never attended court to defend the claim, the pleadings and the Claimant's own testimony reveals that he was a casual employee and used to register daily as he reported to work. This is consistent with the allegations that he was told by the respondent's designer that there was no more work and that he would be called when more work comes up.
9. The Claimant had worked for over one year for the respondent hence the termination of his service ought to have been handled like a regular worker. If indeed it was true there was no more work the respondent should have terminated his service either through declaration of redundancy or termination upon notice as required by law.
10. Concerning claims by the Claimant, he had only worked for approximately one and a half years hence it was possible to identify the public holidays for which he worked and was never paid.
11. Further the Claimant never disclosed the nature of his work that required him to work overtime. In his evidence he stated that he used to report to work at 7.30 am and leave at 5.00pm hence it cannot be true that he worked one and a half extra hours daily.
12. In the circumstances the Court will make a finding of unfair termination and award the Claimant as follows: -

(a) One month's pay in lieu of notice 21,000

(b) Four month's salary for unfair termination 84,000

105,000

(c) Costs of the suit.

13. It is so ordered.

Dated at Nairobi this 13th day of March, 2020

Abuodha Jorum Nelson

Judge

Delivered this 13th day of March, 2020

Byram Ong'aya

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge