



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**  
**CAUSE NUMBER 584 OF 2015**

**BETWEEN**

**JOSEPH WAMBUA NGOVI.....CLAIMANT**

**VERSUS**

**ELSEK & ELSEK K. LIMITED.....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*IRB Mbuya & Company Advocates for the Claimant*

*Miyare & Company Advocates for the Respondent*

**JUDGMENT**

1. This Claim was filed on 13<sup>th</sup> August 2015. The Claimant states, he was employed by the Respondent from early June 2010, to 5<sup>th</sup> June 2015, as a Labourer. He was stationed at Respondent's Nyali premises, Mombasa. He worked in continuity. His last salary was at the rate of Kshs. 15,000, monthly.
2. He was summarily dismissed on 2<sup>nd</sup> June 2015. He was alongside other Employees, told by Respondent's Director, one Osman, that Respondent's Management had changed, and Employees would only be retained upon executing fresh contracts.
3. The Claimant asked to see a copy of the fresh contract, but was asked by Osman to leave immediately. On 5<sup>th</sup> June 2015, the Claimant was informed by Osman that his contract had been terminated, because the Claimant had filed a Claim for work injury compensation against the Respondent, arising out of a workplace accident suffered by the Claimant at Respondent's premises.
4. The Claimant was not registered to N.S.S.F or other Social Security Plan. He prays the Court to enter Judgment against the Respondent in the following terms:-
  - a) 1 month salary in lieu of notice at Kshs. 17,250.
  - b) Arrears of house allowance at Kshs. 135,000.
  - c) Leave pay at Kshs. 69,663.
  - d) Service pay at 15 days' salary for 5 complete years of service at Kshs. 79,759.
  - e) Equivalent of 12 months' salary in compensation for unfair termination at Kshs. 207,000.
  - f) Punitive damages.
  - g) Certificate of Service to issue.

h) Costs.

i) Interest.

5. There was an order made on 26<sup>th</sup> September 2017, that the Claim is heard by way of formal proof, the Respondent having failed to file Response.

6. Hearing was set down for 13<sup>th</sup> November 2017. The Respondent filed an Application on the same date, seeking to have leave to file and serve its Statement of Response out of time. The Court was informed at the same time, that the Claimant was unwell. Formal proof did not therefore take place. Instead the Claimant was allowed 14 days to file Replying Affidavit to Respondent's Application, and the Application scheduled to be heard on 19<sup>th</sup> December 2017. The Respondent did not attend Court on 19<sup>th</sup> December 2017. The Application was dismissed, and the Claim rescheduled for formal proof, on 8<sup>th</sup> October 2018.

7. The Claimant, in his oral evidence restated the contents of his Statement of Claim, and Witness Statement on record. He states he was required to sign a fresh contract, which he declined. He was not allowed to read the fresh contract, and was therefore dismissed. He adopted in full his Statement of Claim, and Witness Statement.

**The Court Finds:-**

8. There is no response to the Claim. The Respondent failed to file Response within the stipulated time, and compounded that default, by failing to prosecute its Application for leave to file Response out of time. The evidence by the Claimant is uncontested. He has shown to the Court that he was employed by the Respondent as a Labourer, between the year 2010 and 2015. His last basic salary was Kshs. 15,000. He was not paid house allowance. He did not have notice of termination. He did not go on leave and was paid nothing in lieu. He was not registered to any Social Security Plan. He was not heard or given valid reason justifying termination. The Respondent did not allow the Claimant to read the proposed new terms and conditions of employment. Termination was unfair, having failed to meet the minimum standards of fairness prescribed under Sections 41, 43 and 45 of the Employment Act 2007.

9. The Claimant has not established the prayer for punitive damages.

IT IS ORDERED:-

**a) Termination was unfair.**

***b) The Respondent shall pay to the Claimant: notice pay at Kshs. 17,250; annual leave pay at Kshs. 69,663; service pay at Kshs. 79,759; and equivalent of 12 months' salary in compensation for unfair termination at Kshs. 207,000.***

***c) Certificate of Service to issue.***

***d) Costs to the Claimant.***

***e) Interest at the rate of 14% per annum from the date of Judgment till payment is made in full.***

**Dated and delivered at Mombasa this 25<sup>th</sup> day of January 2019.**

**James Rika**

**Judge**