



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO 529 OF 2016

SIMON BANDARI CHILUMO.....CLAIMANT

VS

CHINA ROAD AND BRIDGE CORPORATION.....RESPONDENT

JUDGMENT

Introduction

1. The Claimant's claim brought by a Memorandum of Claim dated 5th July 2016 and filed in court on even date is for compensation for unlawful termination of employment.
2. The Respondent filed a Response on 11th October 2016 but did not call any witness. The Claimant testified on his own behalf. Both parties filed written submissions.

The Claimant's Case

3. The Claimant states that he was employed by the Respondent as a mason from 13th January 2015 until 11th November 2015 when his employment was terminated.
4. The Claimant avers that the termination of his employment was unlawful and unfair. He therefore claims the following:

- a) One month's salary in lieu of notice.....Kshs. 18,962
- b) Annual leave.....18,962
- c) 12 months' salary in compensation.....227,544
- d) Punitive damages

The Respondent's Case

5. In its Response dated 7th October 2016 and filed in court on 11th October 2016, the Respondent states that there was no employment relationship between itself and the Claimant.
6. The Respondent therefore maintains that the Claimant's claim is without basis and ought to be struck out.

Findings and Determination

7. Although the Respondent in its Response pleads that there was no employment relationship between itself and the Claimant, this line of defence appears to have been abandoned altogether in the final submissions filed on behalf of the Respondent on 23rd October 2018.
8. There are therefore only two (2) issues for determination in this case:

a) Whether the termination of the Claimant's employment was lawful and fair;

b) Whether the Claimant is entitled to the remedies sought.

The Termination

9. The Claimant told the Court that he lost his job card in July 2015. He reported the loss to his supervisor, one Mr. Hans who issue him with another job card. After three months, Hans told the Claimant to go home because operations had been scaled down.

10. The Claimant kept checking on the status of his employment but he was not called back to work. He was not issued with a termination letter but after 11th November 2015, he did not work for the Respondent.

11. The Respondent did not call any evidence to contradict the Claimant's testimony and the Court had no reason to disbelieve the Claimant, regarding the circumstances leading to his termination.

12. It is evident that the Respondent did not offer any reason for terminating the Claimant's employment nor did it subject the Claimant to any disciplinary procedure as required in law.

13. The Court therefore finds and holds that the termination of the Claimant's employment was substantively and procedurally unfair and he is entitled to compensation.

Remedies

14. In light of the foregoing findings, 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 Claimant's failure to observe due procedure in effecting the termination.

15. I further award the Claimant one (1) month's salary in lieu of notice and prorate leave for ten (10) months.

16. No basis was laid for the claim for punitive damages which therefore fails and is dismissed.

17. Cumulatively, I enter judgment in favour of the Claimant as follows:

a) 6 months' salary in compensation.....Kshs. 113,772

b) 1 month's salary in lieu of notice.....18,962

c) Prorata leave for 10 months (18,962/30x1.75x10).....11,061

Total.....143,795

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

19. The Claimant will have the costs of the case.

20. It is so ordered.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 17TH DAY OF JANUARY 2019

LINNET NDOLO

JUDGE

Appearance:

Mr. Otwere for the Claimant

No appearance for the Respondent