



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAKURU**

**CAUSE NO. 125 OF 2018**

**JOHN MURIITHI MURIU .....CLAIMANT**

**VERSUS**

**CHINA RAILWAY ENGINEERING GROUP COMPANY .....RESPONDENT**

**JUDGEMENT**

On 8<sup>th</sup> May, 2018 the claimant filed the Memorandum of Claim and summons were served upon the respondent on 25<sup>th</sup> May, 2018. Returns were filed to confirm service. there was no appearance or defence filed.

On 11<sup>th</sup> December, 2012 the claimant attended court for hearing directions and the court directed service upon the respondent again and a Hearing Notice for 11<sup>th</sup> February, 2019 which was done on 15<sup>th</sup> January, 2019 and returns filed by the process server, Morris Linyonyi Ayiego.

On the due date, 11<sup>th</sup> February, 2019 the respondent did not attend. The claimant was heard on his case.

In January, 2017 the claimant was employed by the respondent as a Steel Mixer majoring in roads and construction sites. On 5<sup>th</sup> February, 2018 the claimant was unfairly terminated from his employment by the respondent. there was no notice, reasons or a hearing done to explain to the claimant why his employment as terminated.

The claimant's work hours were 7am to 6pm without any off day and he was not compensated for the overtime work or for not taking the rest day. During the public holidays, the claimant remained at work. Such was contrary to the law and was not justified.

The claimant was earning ksh.18, 000.00 per month and is seeking the following dues;

- a. Notice pay Ksh.18,000.00;
- b. Overtime pay ksh.55,932.00;
- c. Work during public holidays ksh.14,160.00;
- d. Gratuity/service pay Ksh.8,500.00;
- e. Annual leave ksh.11,900.00;
- f. Compensation ksh.90,000.00
- g. Costs and interests

The claimant testified in support of the claims made.

As noted above there was no defence made by the respondent. the claims are not challenged.

The claims shall be assessed on their merits based on the pleadings, the evidence and the applicable law.

The failure by an employer to attend once served with summons leaves the court with unchallenged evidence by the employee. Even where the employer is not keen to defend the suit, the filing of work records with the court is an important matter to facilitate the assessment of the terminal dues owing, if any. Without any defence or the work records, the court is left with the claimant's case only.

The claimant has attached a letter of recommendation issued by the respondent and dated 19<sup>th</sup> February, 2018 and noting that he was of good service from January, 2017 to February, 2018. This letter serves one purpose; the parties ended the employment amicably.

However without any work records being filed by the employer with regard to overtime claims, work during public holidays and rest day, such are due. work must also terminate with notice and where not issued, there is payment in lieu.

Without any record of the claimant taking annual leave and that there were statutory deductions and remittances, payment in lieu is due together with service pay.

Such awards adequately compensate the claimant.

**Accordingly, the claims made by the claimant are hereby confirmed as follows;**

- a. Notice pay Ksh.18,000.00;**
- b. Pay for work during public holidays ksh.14,160.00;**
- c. Overtime pay ksh.55,932.00;**
- d. service pay Ksh.8,500.00;**
- e. Annual leave ksh.11,900.00;**
- f. Costs.**

**Delivered at Nakuru this 21<sup>st</sup> day of February, 2019.**

**M. MBARU**

**JUDGE**

In the presence of: .....