



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CASE NO. 297 OF 2017**

*(Before Hon. Justice Mathews N. Nduma)*

**DUNCAN OCHIENG NYANGOJE.....CLAIMANT**

**VERSUS**

**CHINA OVERSEAS ENGINEERING GROUP**

**COMPANY LIMITED..... RESPONDENT**

**JUDGMENT**

1. The suit commenced by a memorandum of claim filed on 5<sup>th</sup> July 2017. Claimant prays for a declaration that termination of employment was unlawful and the court award compensation equivalent to 12 months' salary in respect thereof. The claimant also seeks payment of Kshs. 18,000 in lieu of notice and provision of certificate of service.
2. The respondent was served with summons to enter appearance and memorandum of claim on 5<sup>th</sup> July 2017. A return of service was filed on 10<sup>th</sup> November 2017.
3. The respondent did not enter appearance nor file a statement of defence. The suit is therefore undefended.
4. It is the claimants' case that he was employed by the respondent as a driver on 26<sup>th</sup> September 2013 earning Kshs 18000 a month.
5. The claimant while in the course of duty was arrested on 24<sup>th</sup> March 2016, on allegations that he was found carrying goods suspected to be stolen. He was charged in Siaya PMC Criminal case No. 301 of 2016 but was later found not guilty and was acquitted of the charge.
6. The claimant was summarily dismissed on 30<sup>th</sup> March 2016 by the Respondent. That the respondent did not conduct investigations before summarily dismissing the claimant. The claimant was not paid terminal benefits.
7. The claimant believe that the dismissal was unlawful, unprocedural and ill-motivated. That respondent failed to give the claimant notice to show cause; hearing or payment in lieu of notice. The claimant was also not paid salary in March 2017 and overtime in the sum of Kshs 32,843.75. The claimant also did not get a certificate of service.

**Determination**

8. The averments in the statement of claim and claimant's witness statement dated 30<sup>th</sup> June 2017 are not controverted. The claimant has proved his case on a balance of probabilities.
9. The court awards the claimant Kshs. 18,000 in lieu of one month notice and Kshs. 32,843.75 in respect of unpaid salary for the month of March 2016 which also included overtime worked during the month.

**Compensation**

10. The client worked for 3 years and was summarily dismissed without notice, notice to show cause or a hearing. The claimant has proved that there was no valid reason to dismiss him from employment. The claimant lost means of income and career prospects and suffered loss and damage. The claimant received no payment upon dismissal. The claimant is awarded equivalent of three (3) months' salary in compensation in the sum of Kshs. 54,000.

11. In the final analysis, judgment is entered in favour of the claimant as against the respondent as follows:

- (a) Kshs 18,000 in lieu of notice.
- (b) Kshs. 32,843.75 arrears salary.
- (c) Kshs. 54,000 compensation. Total award Kshs 104,843.75.
- (d) Interest at court rates from date of filing suit till payment in full.
- (e) Costs of the suit.

**Judgment Dated, Signed and delivered this 14<sup>th</sup> day of February, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Odhiambo for Claimant.

Chrispo – Court clerk.