



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO 1855 OF 2013

STANLEY OMWITSI MATAYO.....CLAIMANT

VERSUS

TULSI CONSTRUCTION.....RESPONDENT

JUDGEMENT

1. The claimant pleaded that he was an employee of the respondent as a mason. According to him, he was employed in July, 2011 at a daily wage of Kshs 700/=. This was raised to Kshs 800. He was later transferred to Kiuna where his salary was reduced to Kshs 700/=.
2. On 7th July, 2012, the respondent abruptly terminated his contract without giving any reason. The respondent further did not issue him with any notice. The respondent did not enter appearance nor file response to the claim.
3. At the hearing the claimant stated that he was working for the respondent as a welder at a daily wage of Kshs 700 which was increased to Kshs 800. It was his evidence that they completed work at the Swedish Embassy and moved to Kyuna. On 7th July, 2012 he went to Kyuna and was not allocated any work. The foreman told him there was no work.
4. The claim herein though was not defended it presents itself as a case where the claimant was engaged by the respondent on casual basis and whenever there was a building project.
5. The manner and the reason he gave for the termination of his service portrays how the respondent regarded him. The respondent however neither defended the claim nor attended court to cross-examine the claimant.
6. Section 37 of the Employment Act elevates a casual employee who has been employed for an aggregate period of a month or more to a regular employee for purposes of enjoying the protection accorded to regular employees in the Act in the event of termination of service.
7. The claimant was therefore entitled to be given reasons for the termination of his service and had to be taken through some capability or disciplinary hearing, the claimant was further entitled to notice of termination or payment in lieu thereof.
8. As stated earlier the respondent did not defend the claim to enable the court understand if there was a valid reason for termination and whether due process was followed.
9. The court therefore awards the claimant as follows:

Kshs

- | | |
|---|----------------|
| a) One month's salary in lieu of notice | 24,000 |
| b) Six months wages for unfair termination of service | <u>144,000</u> |

168,000

c) Costs of the suit

10. It is so ordered.

Dated at Nairobi this 8th day of February, 2019

Abuodha Jorum Nelson

Judge

Delivered this 8th day of February, 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge