



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NUMBER 279 OF 2017

BETWEEN

KENYA BUILDING CONSTRUCTION TIMBER & FURNITURE

INDUSTRIES EMPLOYEES UNION.....CLAIMANT

VERSUS

SHARIFF ABDALLA M. LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Ms. Chege Dispute Officer, for the Claimant

No appearance for the Respondent

JUDGMENT

1. The Claimant filed its Statement of Claim, on 18th April 2017. The Claim is brought on behalf of Claimant's Member, a former Employee of the Respondent, Elvis Baya.
2. Elvis was employed by the Respondent as an Electrician on 26th July 2014. He was paid a daily rate of Kshs. 700, as of 16th November 2015, when the Respondent summarily dismissed him.
3. The Claimant avers the Grievant was not given notice and there was no reason or reasons justifying termination. He was not paid any terminal benefits.
4. The Grievant was denied pro-rata leave, notice, service and salary for days worked in November 2015 – totaled at Kshs. 55,125. The Claimant prays the Court to allow the Claim at Kshs. 55,125; grant compensation for unfair termination; certificate of service to issue; and the Respondent to shoulder the costs of the Claim and interest.
5. There is an Affidavit of Service filed by a Court Process-Server, showing the Respondent was served with the Statement of Claim, and relevant Documents, on 2nd November 2017. The Respondent did not enter appearance, or file any Response.
6. The Claim was heard by way of formal proof, on 20th March 2019.
7. The Grievant Elvis, confirmed he was employed by the Respondent as an electrician, on 26th July 2014, earning a daily rate of Kshs. 700, as of the date he was summarily dismissed, on 16th November 2015.
8. He did not have a written contract.

9. The Respondent delayed paying Elvis his dues. When he demanded that he is paid, Shariff Abdalla, Respondent's Director, got annoyed. He asked the Grievant to surrender the Respondent's tools of trade, and leave the workplace. The Grievant was paid Kshs. 1,000 and told to leave.

10. The Grievant sought the assistance of his Union. Demand letter issued without reply from the Respondent. The Union reported the matter to the Labour Office. Consultative and conciliation meetings were ignored by the Respondent.

11. The Claimant approached the Court as a last resort.

The Court Finds:-

12. There is no Response to the Claim.

13. Affidavit of Service on record indicates the Respondent was served with the Summons, but chose not to appear and respond.

14. Earlier efforts at involving the Respondent in settlement of the dispute out of Court, were similarly given a wide berth by the Respondent.

15. Consultative efforts by the Claimant Union were frustrated by the Respondent, as were conciliation efforts by the Labour Office. Adjudication by the Court has likewise been disregarded by the Respondent.

16. The Grievant has through evidence, convinced the Court that he was employed by the Respondent as a Carpenter; he earned Kshs. 700 daily; his contract was terminated without notice and without reason or reasons; he was not paid terminal benefits; and is entitled to terminal benefits and compensation for unfair termination.

IT IS ORDERED:-

a) The Respondent shall, pay to the Grievant, through the Claimant Union, notice, annual leave, pro-rata leave, service and salary for days worked in November 2015, at Kshs. 55,125.

b) The Respondent shall pay to the Grievant through the Claimant, equivalent of 12 months' salary in compensation for unfair termination at Kshs. 218,400.

c) In total the Respondent to pay to the Grievant through the Claimant, Kshs. 273,525.

d) Certificate of Service to issue.

e) Cost to the Claimant.

f) Interest allowed at 14% per annum from the date of Judgment till payment is made in full.

Dated and delivered at Mombasa this 28th day of March 2019.

James Rika

Judge