



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

**AT MOMBASA**

**CAUSE NUMBER 22 OF 2016**

**BETWEEN**

**GEOFFREY WABWIRE HENRY.....CLAIMANT**

**VERSUS**

**AUTO HAULIERS [K] LIMITED.....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Oyugi Kitoo & Company Advocates for the Claimant*

*M.K.Mulei & Company Advocates for the Respondent*

**JUDGMENT**

1. Through his Statement of Claim filed on 25<sup>th</sup> January 2016, the Claimant prays for Judgment against his former Employer, the Respondent herein, on the following terms:-

- a) 1 month salary in lieu of notice at Kshs. 15,000.
- b) Unpaid annual leave over a period of 1 year at Kshs. 12,117.
- c) Public holidays over a period of 1 year at Kshs. 11,540.
- d) Compensation for unfair termination equivalent of 12 months' salary at Kshs. 180,000
- Total...Kshs. 218,657
- e) Costs.
- f) Interest
- g) Declaration that termination was unfair.
- h) Any other order the Court deems fit to grant.

2. The Claimant avers that he was employed by the Respondent on 1<sup>st</sup> July 2014 as a Welder. His contract was terminated by the Respondent, on 30<sup>th</sup> September 2015. There was no valid reason justifying termination. The Respondent brought in another Employee to replace the Claimant, without regard to Claimant's long and exemplary years worked.

3. The Respondent filed its Statement of Response on 6<sup>th</sup> May 2017. It is admitted that the Claimant was employed by the Respondent as a Welder, between 1<sup>st</sup> July 2014 and 31<sup>st</sup> August 2015 when he voluntarily resigned. The Respondent remained closed during Public Holidays.

Having resigned voluntarily, the Claimant cannot allege that his contract was terminated by the Respondent. He is not entitled to the prayers sought. The Respondent prays for dismissal of the Claim with costs to the Respondent.

4. The Claimant gave evidence, and rested his case, on 5<sup>th</sup> June 2018. General Manager Riayaz Abdulrehman Ebrahim gave evidence for the Respondent on 23<sup>rd</sup> October 2018 when hearing closed. The matter was last mentioned on 6<sup>th</sup> December 2018, when Parties confirmed the filing of their Submissions.

5. The Claimant told the Court his first salary was Kshs. 12,000 monthly, and the last was Kshs. 15,000 monthly. He was told by the Security Guard that there was no more work on 30<sup>th</sup> September 2015. Information came from the Workshop Manager, Salim. The Claimant consulted Salim, and confirmed that Salim had already employed a replacement for the Claimant. There was no notice issued to the Claimant. He was not paid any terminal dues. He worked 7 days a week, and never went on annual leave. He did not sign the annual leave documents exhibited by the Respondent. He never wrote a letter of resignation. The one exhibited by the Respondent did not originate from the Claimant. It did not bear his signature.

6. On cross-examination the Claimant told the Court that his contract was terminated orally. He did not have a Witness who saw this happen. Salim confirmed termination. The Claimant was not issued a letter of termination. He did not have evidence showing termination took place. He did not have a document showing his salary was Kshs. 15,000. His letter of appointment shows salary was Kshs. 12,000 monthly. He never applied for annual leave. He went on leave for 7 days when his Mother passed away. He did not know about leave taken when his Child was said to have been sick. He did not have a Child. He last worked on 30<sup>th</sup> September 2014. He was satisfied with the salary paid. He did not write the letter of resignation. On redirection, the Claimant testified that the days taken during his Mother's burial were off-duty days, not annual leave days.

7. Ebrahim confirmed that the Claimant was employed in 2014 as a Welder. He was undisciplined, occasionally absent without leave of the Respondent. He resigned and never went back to work. The Respondent did not open on Sundays and Public Holidays. Cross-examined, Ebrahim told the Court that the Respondent does not have a human resource department. Employees are attended to by the Workshop Manager or by Ebrahim. There is no proof that the resignation letter was received by the Respondent.

#### **The Court Finds:-**

8. The letter of appointment issued to the Claimant on 1<sup>st</sup> July 2014, agrees with his evidence that he was employed as a Welder, effective 1<sup>st</sup> July 2014. It is not in contention that he earned the salary indicated on the letter, at Kshs. 12,000, at the beginning.

9. The Claimant states he earned Kshs. 15,000 per month as of the date he left employment, on 30<sup>th</sup> September 2015. The Court accepts the evidence of the Claimant that by the time of leaving, his salary was Kshs. 15,000 monthly. The Parties did not inform the Court whether the Claimant was a graded or ungraded artisan. Under legal notice number 117 of 2015, it is fair to place the Claimant's salary as a Welder at the stated rate of Kshs. 15,000.

10. There is evidence that the Claimant resigned through a letter dated 31<sup>st</sup> August 2015. The letter is handwritten and bears a signature which resembles Claimant's signature, on his Verifying Affidavit. The main reasons given by the Claimant in his letter, in explaining his resignation decision, is that he was injured while at work. He did not feel strong enough to continue working. The oral evidence by both Parties is that indeed the Claimant was injured and out of work at some point. The oral evidence about injury matches the contents of the letter of resignation. The other reason cited is that the salary was insufficient. The Court does not think the Respondent manufactured this letter, and forged Claimant's signature. The Claimant should have reported forgery to the Police as soon as he saw the letter of resignation. He did not tell the Court of any action taken, on learning the Employer had forged his signature and falsified his employment record.

11. Consequently the prayers for notice pay and compensation have no basis and are declined.

12. The Claimant worked for 1 year and 2 months. He qualified for a minimum of 21 days of annual leave under Section 28 of the Employment Act 2007.

13. There are several leave requisition forms signed by the Claimant indicating he took some days of annual leave for the period of service. He has not accounted for these days in his prayer for annual leave. It is agreed that after the Claimant was injured, he was away from work for some days. Although these should have been treated as sick-off days, the overall picture is that there were many days during the 1 year of service, when the Claimant was not able to render any work to the Respondent. He was away on many occasions attending to personal matters. The Claimant did not account for these days, to justify grant of a minimum of 21 days of annual leave.

14. The Claimant states he worked on Public Holidays, for the whole year served. The Respondent's position is that the premises remained closed on Public Holidays. There is no document or other form of evidence to establish that the Respondent was open for business on all Public Holidays, and to show that indeed the Claimant was welding during all the Public Holidays. There ought to be some evidence in form of attendance register, or oral evidence from a Colleague of the Claimant, showing that the Claimant worked on Public Holidays. It is not sufficient to ask the Court to take notice of the number of Public Holidays in the year, and make an assumption that the Claimant worked during those days. There must be some evidence of actual work done. The claim is unsupported by evidence and is declined.

15. ***The Claim has no merit. It is ordered the Claim is dismissed with no order on the costs.***

**Dated and delivered at Mombasa this 15<sup>th</sup> day of March 2019.**

**James Rika**

**Judge**