



**REPUBLIC OF KENYA**

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

**CAUSE NO.1082 OF 2012**

**GEOFFREY KAGOYA MURUGI..... CLAIMANT**

**- VERSUS -**

**NATUREGROWN FLOWERS LIMITED..... RESPONDENT**

(Before Hon. Justice Byram Ongaya on Wednesday 20<sup>th</sup> March, 2019)

**JUDGMENT**

The claimant filed the memorandum of claim on 22.06.2012 through Gakoi Maina & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) A declaration that the termination was unlawful, untimely and an order that the claimant be paid his terminal dues and benefits being pay in lieu of notice Kshs.7, 820.00; 21 annual leave days Kshs.5, 474.00; compensation for breach of contract Kshs.93, 840.00; service pay Kshs.5, 213.33 making a sum of Kshs.112, 347.33.
- b) Costs of the claim plus interest therein.

The memorandum of claim was filed on 10.01.2013 through Njoroge Kugwa & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs to the respondent. On 18.07.2018 the Court allowed the application by the respondent's advocates to cease acting for the respondent and henceforth the respondent was in person. On the same 18.07.2018 the claimant closed his case. The case will therefore be determined on the basis of the pleadings, documents and the final submissions filed for the claimant.

The main issue for determination is whether the claimant is entitled to the remedies as prayed for. The Court makes findings as follows:

- 1) It is not in dispute that the respondent employed the claimant as a grader by the letter dated 04.01.2010. It was a 3 months' fixed term contract starting from 04.01.2010 to 31.03.2010. By the letter dated 01.05.2010 the respondent confirmed the claimant in appointment as a grader upon permanent terms of service effective 01.05.2010. It is not in dispute that as at the time of termination the claimant's consolidated monthly pay was Kshs. 7, 820.00. The Court returns that the parties were in a contract of service as per the letters of the contracts of employment on record.
- 2) It is not in dispute that the respondent suffered unfavourable economic conditions and it shut down its operations. Thus, the claimant's employment was terminated on account of redundancy when in December 2010 he was informed by the respondent that his services would not be required effective sometimes in January 2011. It is not in dispute that the claimant had been in the service of the respondent for over one year. The Court returns that the claimant's employment was terminated on account of redundancy.
- 3) The Court has considered that there was no evidence that respondent served the mandatory one month notice upon the claimant and upon the area labour officer on the extent of the intended redundancy and to that extent, the Court returns that the termination was unfair and unlawful. The Court has considered that the claimant had served for only one year, he desired to continue in employment and he did not contribute to his termination. The Court awards him 3 months' gross salaries under section 49 of the Employment Act, 2007 for the unfair termination at Kshs. 7, 820.00 making **Kshs.23, 460.00**.
- 4) The claimant had served for one year and the Court returns that in absence of any other material, on a balance of probability, the claimant is entitled to 21 days annual leave due but not taken making **Kshs.5, 474.00** and as per section 28 of the Act.
- 5) The claimant has prayed for service pay of **Kshs.5, 213.33** and in view of the one year service, the Court finds that the same is reasonable and is awarded under section 35 of the Act.
- 6) There was no evidence that the claimant was paid at least one month in lieu of notice as provided for in section 40 of the Act and is

awarded the same as prayed at **Kshs. 7820.00.**

In conclusion judgment is hereby entered for the claimant against the respondent for:

- 1) The declaration that the termination of the contract of employment between the parties was unlawful and untimely.
- 2) The respondent to pay the claimant **Kshs. 41,967.33** by 01.05.2019 failing interest to be payable thereon at Court rates till full payment.
- 3) The respondent to pay the claimant's costs of the suit.

**Signed, dated and delivered in court at Nairobi this Wednesday 20<sup>th</sup> March, 2019.**

**BYRAM ONGAYA**

**JUDGE**