



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NYERI**

**CASE NO. 77 OF 2015**

**CHARLES NDERITU GITONGA.....CLAIMANT**

**VERSUS**

**KIRINYAGA CONSTRUCTION (K) LIMITED.....RESPONDENT**

**JUDGMENT**

1. The Claimant sued the Respondent seeking to recover for unlawful dismissal. The Claimant averred that he was employed as a mason on 8<sup>th</sup> October 2009 and was deployed to work as such in southern Sudan earning a net salary of Kshs. 30,000/-. He was an employee of the Respondent till his suspension in May 2012 without notice. He averred that he was instructed by the Respondent's projects manager to proceed to the head office in Nairobi for more information about his suspension. He was advised to go home and await communication. He avers he was not paid salary for the months of January 2012 to May 2012. He thus sought the payment of damages for the unlawful dismissal – Kshs. 360,000/-, salary arrears for the 5 months – Kshs. 150,000/-, terminal dues for the years of service, one month's salary in lieu of notice, costs of the suit plus interest.

2. The Respondent in its defence averred that the Claimant was not suspended from employment and that he was to report to the Nairobi office but he failed to do so and instead filed this suit. The Respondent averred that the suit was filed out of time as the Claimant removed himself from employment in January 2012. The Respondent averred that the Claimant was paid all the salary for days worked and that the suit should be dismissed with costs.

3. The Claimant testified and stated that he was dismissed without notice after working for the Respondent in Southern Sudan. The Claimant submitted that the Respondent had acknowledged the fact of his employment in the letter of reply to the demand letter. The Claimant thus sought his dues as per the claim.

4. The Claimant was indeed an employee of the Respondent as shown by his employment card and the letters by the Respondent in relation to the employees who made demand for payment of dues after the service in South Sudan. The Claimant was a mason and his salary for 5 months was claimed as was his notice pay. He also sought terminal dues being gratuity of Kshs. 162,000/-.

5. The dismissal of the Claimant was without notice. He was not afforded the safeguards under Section 41 of the Employment Act. He proved that he was not paid his dues as the records from the Labour Office and the Respondent did not have any reference to payment made to him though he was listed as one of the employees who was seeking dues. He thus is entitled to:-

- a. One month's salary as notice – Kshs. 30,000/-
- b. 5 months unpaid salary Kshs. 150,000/-
- c. Gratuity for his service Kshs. 162,000/-
- d. Damages for his unlawful dismissal – Kshs. 150,000/- being 3 month's salary
- e. Costs of the suit
- f. Interest on the sums in a), b), c) and d) above at court rates from the date of judgment till payment in full.

It is so ordered.

**Dated and delivered at Nyeri this 5<sup>th</sup> day of March 2019**

**Nzioki wa Makau**

**JUDGE**

I certify that this is a true copy of the Original

**Deputy Registrar**