



**REPUBLIC OF KENYA**

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

**CAUSE NO. 1292 OF 2015**

**JEFFERSON KIMANTHI SAKAYO.....CLAIMANT**

**VERSUS**

**NANKEN BUILDERS.....RESPONDENT**

**JUDGMENT**

1. The Claimant instituted legal proceedings against the Respondent on 28 July 2015 alleging unfair termination of employment and breach of contract.
2. According to an affidavit of service filed in Court on 14 August 2018, a director of the Respondent called Mr. Nanken was served with Summons on 20 April 2018.
3. The Respondent failed to enter *Appearance* or file a *Response*.
4. On 31 October 2018, the Court being satisfied with the service, directed that the Cause proceed to formal proof and the Claimant's case was taken on 18 March 2019.
5. The Claimant filed submissions on 28 March 2019.
6. The Court has considered the pleadings, evidence and submissions.

**Unfair termination of employment**

7. The Claimant was employed by the Respondent on 2 May 2012 as a turn boy/mechanic and he served until 2 March 2015.
8. The Claimant's testimony that he was dismissed by a director of the Respondent *without notice* or the giving of reasons remain unchallenged.
9. Section 35(1)(c) of the Employment Act, 2007 requires *written notice of termination of employment* of at least 28 days, unless it is a case of summary dismissal.
10. The Claimant's testimony on record that no *written notice* was issued remained uncontested and the Court therefore finds that the termination of the Claimant's employment was unfair.

***Pay in lieu of notice***

11. With the conclusion, the Court holds that the Claimant is entitled to the equivalent of 1 month salary in lieu of notice (testimony was that the monthly pay was Kshs 9,000/-).

***Compensation***

12. The Claimant was employed by the Respondent in 2012 and left in 2015. Considering the 3 year length of service, the Court will award compensation equivalent to 3 months gross wages.

***Leave***

13. The Claimant did not lay any evidential foundation for this head of claim and it is declined.

***Service pay***

14. The Claimant sought Kshs 13,500/- on account of service pay.

15. There being no evidence that the Claimant was a member of a pension scheme or National Social Security Fund, the Court will allow the head of claim.

**Conclusion and Orders**

16. The Court finds and declares that the termination of the Claimant's employment was unfair and awards him

|                           |                      |
|---------------------------|----------------------|
| (a) Pay in lieu of notice | Kshs 9,000/-         |
| (b) Compensation          | Kshs 27,000/-        |
| (c) Service pay           | Kshs 13,500/-        |
| <b>TOTAL</b>              | <b>Kshs 49,500/-</b> |

17. Claimant to have costs on half scale.

**Delivered, dated and signed in Nairobi on this 2<sup>nd</sup> day of April 2019.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Mr. Obado instructed by Njogu & Associates Advocates

Respondent did not participate

Court Assistant Lindsey