



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 1048 OF 2017

DAVID MAINA.....CLAIMANT

- VERSUS -

S.S MEHTA & SONS LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 21st June, 2019)

JUDGMENT

The claimant filed the memorandum of claim on 07.06.2017 in person. The claimant prayed for judgment against the respondent for:

- a) Pay in lieu of notice Kshs.13, 104.00.
- b) Salary for 1 day worked in August 2016 Kshs.504.00.
- c) Compensation for unfair termination 12 months' wages Kshs. 157, 248.00.
- d) Total Kshs.170, 856.00.
- e) Costs of the suit.
- f) Interest.
- g) Any other relief as the Court may deem just.

The claimant's case is that he was employed by the respondent as a general worker at Kshs.504.00 making Kshs. 13, 104.00 per month. The appointment was oral. The employment commenced in January 2015 and in August 2016 the respondent terminated the employment without notice and refused to pay terminal dues. The claimant filed the present suit.

The respondent filed the memorandum of response on 41.10.2017 through Mumia & Njiru Advocates. The respondent prayed that the claimant's suit be dismissed with costs.

The respondent admitted that the claimant was duly employed by the respondent at all material time starting January 2015. The respondent's case was that the claimant was employed to work on Muratina Road Project and the tenure of employment was tied to the existence and duration of the project. The respondent pleaded that the claimant was informed as much at the time of employment. The respondent pleaded that the employment was casual based on availability of tasks carried out on a daily basis. Further the claimant was informed about the winding up of the projects in Muratina and he was given a notice of the winding up and given his terminal dues and he signed acknowledging the payment.

The claimant testified to support his case. He testified as follows:

- a) He was employed on 15.01.2015 and terminated on 24.08.2016 when he was sacked.
- b) The contract was oral and he was paid on weekly basis at a daily rate of Kshs.504. When it rained they did not work because graders could not work on such wet days. There was no break in service.

c) He claims one day he had not been paid.

The claimant's witness (CW2) was one Thomas Rubia. He confirmed that they were workmates at the time the claimant worked for the respondent.

The respondent's witness (RW) was one Geoffrey Kamondo, the deputy human resources manager. RW confirmed that the respondent employed the claimant for the period in issue only that the claimant worked as a casual and there was a break in service - he reported at will. RW testified that in 2016 the days worked were counted and the claimant was paid in lieu of annual leave accordingly. In 2013 he had worked for 3 complete months and he was paid prorated leave. In 2016 he had worked for 6 complete months and leave paid accordingly. RW testified that for some months there was no work and the claimant did not report on duty. The road construction ended and the respondent being a sub-contractor had no assignments for the claimant.

RW testified that it was not in dispute that payment was on weekly basis. The parting came when the construction ended and no service was paid. Terminal notice was not paid

First the Court returns that there is no reason to doubt the respondent's account that the employment relationship ended when the construction project was completed. There was no unfair termination because the contract of service lapsed upon attaching of the precondition for separation namely, end of the road construction project. In any event the claimant moved no evidence on particulars of the circumstances of the alleged termination other than stating that he was sacked - details of which he never provided in his pleadings and evidence. The Court upholds the respondent's account of the circumstances of the separation. The Court returns that there was no unfair termination of the employment and therefore no entitlement to the compensation as prayed for.

On the other reliefs prayed for, the Court returns that the claimant testified that he was not paid one day worked and he is awarded as prayed. The Court further finds that the claimant being aware that the contract was until completion of the project, the claim for pay in lieu of notice was unfounded - especially in view of the fact that pay was undisputedly on weekly basis.

In conclusion judgment is entered for the claimant for:

- a) Payment of **Kshs.504.00** by 01.07.2019 failing interest to be payable at Court rates from the date of filing suit till full payment
- b) Each party to bear own costs of the suit.

Signed, dated and delivered in court at **Nairobi** this **Friday 21st June, 2019**.

BYRAM ONGAYA

JUDGE