



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NUMBER 1301 OF 2018**

[Previously CMCC No. 30 of 2008, Milimani Commercial Courts, Nairobi]

**BETWEEN**

**JULIUS O. OGUTU.....CLAIMANT**

**VERSUS**

**DAYALAL BHANJI & SONS LIMITED..... RESPONDENT**

**Rika J**

**Court Assistant: Lawrence Osotsi**

**Nzavi & Company, Advocates for the Claimant**

**Munyalo Muli & Company, Advocates for the Respondent**

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**JUDGMENT**

1. The Claimant initiated this Claim through a Complaint filed at the Chief Magistrate's Court at Milimani Commercial Courts, Nairobi, way back on 9<sup>th</sup> January 2008. His position is that he was employed by the Respondent as a Turn Boy. He was involved in a road accident while in the course of his duties, on or about 30<sup>th</sup> August 2003. He broke both of his legs. He was hospitalized for 6 months. When he reported back to work after treatment, the Respondent did not assign him any work. He was soon after relieved of his duties. He was earning a monthly salary of Kshs. 5,280. He was not paid while in hospital. His prayers are: -

- a. Unpaid salary of 6 months at Kshs. 36,880.
- b. Severance pay of 3 years at Kshs. 7,260.
- c. 2 months' salary in lieu of notice at Kshs. 10,560.

Total...Kshs. 55,360.

d. Costs and interest.

2. The Respondent filed its Statement of Defence on 7<sup>th</sup> March 2008. The Statement is a general denial of all the averments made by the Claimant.

3. The matter was transferred to the E&LRC through an order of the E&LRC, made on 9<sup>th</sup> May 2018.

4. It was heard on 5<sup>th</sup> April 2019, during the Court's Service Week. The Claimant gave evidence, as did Respondent's Transport Manager, Joseph Kiswii.

5. The Claimant confirmed in his oral evidence, the contents of his Plaint. Kiswii told the Court, it is true that the Claimant was employed by the Respondent as a Turn Boy. He was injured while on duty, and hospitalized. It is true that the Respondent did not pay his salary while the Claimant was hospitalized. Kiswii was categorical that the Claimant should be paid his dues.

**The Court Finds:-**

6. This is an old and minor Claim, which ought to have been concluded years ago. It is not clear from the record why it has taken this long to be finalized.

7. It is also not clear why the Respondent made a general denial in its Defence, before conceding to the Claim in its evidence before the Court.

8. The Claimant has not established that he was entitled to notice of 2 months or salary of 2 months' in lieu of notice. ***He is granted the statutory minimum of 1 month salary in lieu of notice at Kshs. 5,280.***

9. He similarly has not laid a foundation for grant of severance pay. The prayer is rejected.

10. The prayer for unpaid salary of 6 months has been established through the evidence given by the Claimant, and the concession made by the Transport Manager. There are medical records showing the Claimant was in a road traffic accident, and was hospitalized for 6 months. He was not paid his salary during hospitalization. ***He is granted 6 months' salary, at Kshs. 31,680.***

11. The Claimant merits the prayer for costs and interest. On interest, the Court is of the view that this should be payable from the date when the Claimant left employment – 30<sup>th</sup> August 2003. There is no reason given by the Respondent for withholding Claimant's salary for 6 months, and not paying him 1 month salary in lieu of notice. Why would the Respondent wait for 16 years, to admit in Court to owe Claimant his salary of 6 months?

IT IS ORDERED:-

**[a] The Respondent shall pay to the Claimant 1 month salary in lieu of notice at Kshs. 5,280 and 6 months' salary at Kshs. 31,680 – total Kshs. 36,960.**

**[b] Interest on the sum of Kshs. 36,960 is allowed at 14% per annum, based on simple interest rate, from the date of termination - 30<sup>th</sup> August 2003- till payment is made in full.**

**[c] Costs to the Claimant.**

**Dated and signed at Mombasa this 4<sup>th</sup> day of July 2019.**

**James Rika**

**Judge**

**Dated, signed and delivered at Nairobi this 12<sup>th</sup> day of July 2019.**

**Byram Ongaya**

**Judge**