



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NUMBER 56 OF 2018**

**BETWEEN**

**HUSSEIN MWAHINZANO CHITSUNYU.....CLAIMANT**

**VERSUS**

**TOP STEEL [KENYA] LIMITED.....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Odongo B.O. & Company Advocates for the Claimant*

*No appearance for the Respondent*

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**JUDGMENT**

1. The Claimant filed his Statement of Claim on 30<sup>th</sup> January 2018. It has not been responded to. There is an Affidavit of Service on record, showing that the Respondent received Notice of Summons and the Statement of Claim.

2. The Claimant states he was employed by the Respondent as a General Labourer at Respondent's site in Mazaras, from April 2016 to April 2017. He was severely injured in his abdomen while at work, on 26<sup>th</sup> October 2016. He was treated. On reporting back in April 2017, he was advised by the Respondent that he could not resume, on account of his injury. His contract was terminated. He last earned a daily rate of Kshs. 400, translating to Kshs. 9,600 monthly. He prays the Court to find termination was unfair, and grant him Judgment against the Respondent for:-

- a) 1 month salary in lieu of notice at Kshs. 9,600.
- b) Annual leave of 30 days at Kshs. 9,600.
- c) House allowance at Kshs. 17,280.
- d) Service pay at Kshs. 4,800.
- e) Compensation for unfair termination equivalent of 12 months' salary at Kshs. 115,280.

Total...Kshs. 156,280.

- f) Costs and any other suitable relief.

3. The Claimant was heard on formal proof on 12<sup>th</sup> June 2019. He restated the contents of his Statement of Claim, as summarized above. He filed Closing Submissions on 2<sup>nd</sup> July 2019.

**The Court Finds:-**

4. The Claim is unchallenged.

5. The Claimant was employed by the Respondent as a General Labourer for 1 year, 2016 to 2017. He was injured at work in October 2016, and took time off for medical attention. Upon return in April 2017, he was advised he could not continue working owing to his injury.

6. The Respondent has not given evidence showing there was valid reason to justify termination and showing that procedural fairness was observed. Termination did not meet the minimum standards of fairness under Sections 41, 43 and 45 of the Employment Act. The Respondent did not discharge its onus of justifying termination, under Section 47 [5] of the Act. Termination was unfair.

**7. The prayer for notice pay of Kshs. 9,600 is allowed.**

8. The Claimant merits compensation for unfair termination. He was in employment for 1 year, and actively worked from April 2016 to October 2016. He was under treatment from October 2016 to April 2017. He was in active employment for 6 months and was a patient for the other 6 months. His prayer for equivalent of 12 months' salary in compensation for unfair termination, is disproportionate to the period worked. **He is allowed equivalent of 3 months' salary in compensation for unfair termination at Kshs. 28,800.**

9. He was paid a daily rate. Minimum daily and hourly rates are paid inclusive of house allowance. His prayer for house allowance is declined.

10. The Claimant completed 1 year of service. There is no reason to deny his prayers for annual leave and service pay under Sections 28 and 35 of the Employment Act respectively. He however not justified annual leave of 30 days. **He is allowed the minimum statutory 21 days of annual leave, giving him an amount of Kshs. Kshs. 8,400. Service pay is granted at Kshs. 400 per day, for 15 days, at Kshs. 6,000.**

11. **Costs to the Claimant.**

IN SUM, IT IS ORDERED:-

**a. The Respondent shall pay to the Claimant, notice at Kshs. 9,600; compensation at Kshs. 28,800; annual leave at Kshs. 8,400; and service at Kshs. 6,000 – total Kshs. 52,800.**

**b. Costs to the Claimant.**

**Dated and delivered at Mombasa this 27<sup>th</sup> day of September 2019.**

**James Rika**

**Judge**