



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO 848 OF 2013

WILFRED MORANGA.....CLAIMANT

VERSUS

DPL FESTIVE LIMITED.....RESPONDENT

JUDGEMENT

1. The claimant pleaded that he was employed in March, 2007 as a mixer and machine operator at a salary of Kshs 550 per day translating to Kshs 16,500 per month. He worked until 2nd January, 2012 when his employment was abruptly terminated under circumstances he considered unlawful and grossly unfair. According to the claimant on 3rd December, 2011 he reported to work as usual and worked his usual shift and was requested to work overtime for another 8 hours due to pressure of work. Having worked for the shifts without break he was exhausted and therefore declined an offer to continue working for a third shift.

2. On being pressured by the superior to continue working the claimant protested and was asked by the superior to continue working the claimant protested and was asked by the superior to leave and return after one month. He returned on 2nd January, 2012 and was informed that his services had been terminated.

3. The respondent on its part averred that the claimant was a general worker and was being paid on daily basis hence the issue of unfair termination never arose. The respondent further stated that the claimant could work on and off and was not consistent. He never worked continuously for a whole month on any single occasion. According to the respondent the claimant just stopped coming to work.

4. At the hearing only the claimant attended and adopted his witness statement as his evidence in the case. The statement was a repetition of the averments in the pleadings.

5. In a claim for termination of employment the burden of proof that a fair termination has occurred rests on the employer. In this particular case the respondent claimed the claimant absconded work however no evidence was tabled either with the pleadings or through witness statement that any effort was made by the respondent to find the claimant's whereabouts.

6. Further the fact that the claimant was a casual worker did not mean his services could be brought to an end without following the procedure laid down in the Employment Act. The claimant had worked for more than three years for the respondent hence enjoyed similar rights as regular employees.

7. In the absence of any evidence from the respondent to justify the termination, the court deems the termination as unfair and awards the claimant as follows:

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|---|---------------|
| a. One month's salary in lieu of notice | 16,500 |
| b. Eight months' salary as compensation for unfair termination | 132,000 |
| c. Service pay at the rate of 15 days pay for each complete year of service (3 years) | <u>24,750</u> |

173,250

8. The claim for leave and house allowance though pleaded, the claimant did not state in his statement nor produce any evidence to support these claims and so they are therefore rejected.

9. It is so ordered.

Dated at Nairobi this 20th day of September, 2019

Abuodha J. N.

Judge

Delivered this 20th day of September, 2019

Abuodha J. N.

Judge