



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA

CAUSE NUMBER 430 OF 2018

BETWEEN

JOHANA MBITA MANGALE.....CLAIMANT

VERSUS

CHINA DALIAN INTERNATIONAL

ECONOMIC AND TECHNICAL COOPERATIVE GROUP LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Otieno Otwere & Associates, Advocates for the Claimant

No appearance for the Respondent

JUDGMENT

1. This Claim is undefended.
2. The Respondent is shown to have received and acknowledged service of the Statement of Claim and Notice of Summons, on 13th July 2018.
3. The Statement of Claim was filed on 21st June 2018.
4. The matter was fixed for mention on 22nd November 2018, when the Claimant sought and was granted a date for formal proof.
5. The Respondent was again notified about the mention date, but was absent on 22nd November 2018.
6. Formal proof took place on 29th July 2019.
7. The Claimant's case is that he was employed by the Respondent as a Security Guard on 15th November 2014. His last salary was Kshs. 24,255 monthly.
8. He fell ill on 26th December 2017. He was granted sick off until 29th December 2017, during which period he received medical attention. On 28th December 2017, the Claimant felt well enough and reported at work. His Supervisor called him to his office, and informed the Claimant that his services had been terminated. The Claimant was asked to return to the office the following day- 29th December 2017, when he was paid Kshs. 4,570, and told never to go back to the Respondent's premises.
9. The Claimant adopts his Witness Statement and Documents filed alongside the Statement of Claim on 21st June 2018. The Documents include pay slips, medical records, bank statements and demand letter.

10. He was never presented with any charge, for any employment offence at the workplace. He was never heard at any disciplinary forum. He was denied notice and annual leave. He was denied salary for December 2017. He seeks Judgment against the Respondent for: Annual leave of 3 years at Kshs. 72,765; 12 months' salary in compensation for unfair termination at Kshs. 291,060; 1 month salary in lieu of notice at Kshs. 24,255; and salary for December 2017 at Kshs. 24,255- total Kshs. 412,335. Other prayers include; declaration that the Claimant was employed on permanent basis; the Respondent to issue the Claimant Certificate of Service and Recommendation Letter; Costs, Interest; and any other Relief.

The Court Finds:-

11. The Respondent has failed to respond to the Claim. All necessary Pleadings and Documents are shown to have been served upon, and received by the Respondent. The Respondent, like a majority of Employers of Chinese background brought before this Court, failed to file anything by way of response, or attend Court when required to do so.

12. The Claimant has presented adequate oral and documentary evidence, to establish that he was employed by the Respondent as a Security Guard, manning Respondent's facility at Taru, along Mombasa- Nairobi highway. The Respondent was involved in the construction of the highway. The terms and conditions of employment are not disputed. It is not disputed that the Respondent terminated the Claimant's contract unfairly, after the Claimant was stricken ill and placed on sick off. There was no notice. The Claimant was not given a hearing of any form. He left employment without terminal benefits. He has not however shown the Court what use there is, in declaring he was employed on permanent basis. There is no suggestion anywhere in the record, that he was not in regular employment. There is no basis for self-doubt on the nature of the Claimant's contract. There is similarly no legal basis for the Court to order the Respondent to issue a recommendation letter. The law, under Section 51 of the Employment Act, requires an Employer to issue Certificate of Service. Whether an Employer should issue a letter of recommendation is entirely at the discretion of an Employer. The Court is satisfied the rest of the Claim has been established, and enters Judgment in favour of the Claimant as follows:-

a) It is declared that termination was unfair.

b)The Respondent shall pay to the Claimant: annual leave at Kshs. 72,765; compensation equivalent of 12 months' salary at Kshs. 291,060; notice at Kshs. 24,255; and salary for December 2017 at Kshs. 22,255 – total Kshs. 412,355.

c) Certificate of Service to issue.

d) Costs to the Claimant.

e) Interest allowed at 14% per annum from the date of Judgment till payment is made in full.

Dated and delivered at Mombasa this 24th day of October 2019.

James Rika

Judge