



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO 286 OF 2014**

**JOHN MUTUA MWANGI.....CLAIMANT**

**VERSUS**

**ARIHANT INDUSTRIES LIMITED.....RESPONDENT**

**J U D G E M E N T**

1. The Claimant averred that he was employed by the respondent in June, 2006 as a machine attendant at a salary of Kshs. 8,000/= per month.
2. On 1<sup>st</sup> April, 2009 the Claimant signed a formal contract and worked up to 2<sup>nd</sup> April, 2018 when he was verbally terminated. His salary at that time was Kshs **11,383/=** per month. At the time of termination, he was told his services were no longer needed and was paid Kshs. **17,033/=** which was three month's leave pay.
3. According to the Claimant he was advised to report to the Labour Office regarding his other terminal benefits which he did on 22<sup>nd</sup> April, 2013 and met at the District Offices with a Mr. Dilip but was not paid his terminal benefits.
4. According to the Claimant, during the entire time he worked for the respondent he was never paid house allowance, not given any rest day and was underpaid contrary to wages (General) Amendment orders of 2009,2010,2011 and 2012. The Claimant further claimed that he worked during public holidays but was never paid.
5. In response to the claim, the respondent stated that it employed the Claimant from 31<sup>st</sup> May,2009 to 28<sup>th</sup> February,2013 and his contract was based on contract agreement which the Claimant voluntarily signed.
6. According to the respondent, the Claimant was not orally dismissed on 2<sup>nd</sup> April, 2013 as alleged since his contract had already expired on 28<sup>th</sup> February, 2013.
7. The respondent further stated that it received a letter from the County Labour Officer Mr. P.M. Kanyotu dated 4<sup>th</sup> April,2013 and 12<sup>th</sup> April, 2013 respectively, the issue being a complaint lodged by the Claimant and another being conciliation meeting. The respondent's manager attended and both parties gave their views on the issue in dispute but instead of finalizing the matter, the Claimant filed the present suit.
8. According to the respondent, the Claimant was paid house allowance and all other entitlement as provided in law. The respondent further pleaded that before the expiry of the contract on 28<sup>th</sup> February, 2013 the respondent gave the Claimant salary for March, in lieu of notice of not being informed in advance that his contract would not be renewed.
9. At the trial the Claimant relied on his statement filed with the claim as his evidence in chief. In cross-examination he stated that he was employed in 2006 he however had no document to show he was employed then. He further said he had no document to show he left employment in April, 2013. It was further his evidence that he signed the contract for the period 1<sup>st</sup> January,2013 ending 28<sup>th</sup> February, 2013. He denied saying he was never paid house allowance but stated that he was never paid statutory wages hence was underpaid.
10. In re-examination he stated he was never given a letter of appointment and that his salary was paid through a salary voucher.
11. The respondent witness Mr. Dillon Kensar testified that he worked for the respondent as production manager. According to him the Claimant was paid salaries and allowances as per the law. He further testified that the Claimant was hired on a three months renewable contract and that the Claimant's contract ended in March, 2013 and that by April, 2013 he had no contract since the contract was not renewed.

12. In cross-examination he stated that the Claimant started working before 2009. It was end of 2008. Previously the Claimant was a casual worker and was working as a mechanic attendant and was paid weekly. From April, 2009, the Claimant was paid through pay slip. It was his evidence that the Claimant's first contract was from 1<sup>st</sup> April, 2009 to May,31<sup>st</sup> 2009. It was for two months and the third month served as notice period.

13. The Claimant averred that the respondent verbally terminated his contract in April, 2013. The respondent however, maintained that the Claimant from 2009 was hired on two months renewable contract and these contracts were renewed until February, 2013 when the respondent decided not to renew the contract. According to the respondent the Claimant was paid salary for March in lieu of the months' notice since he was not told on time that his contract would not be renewed.

14. Whereas the Court finds it curious that the respondent chose to employ the Claimant on two months' renewable contracts from 2009, an employee on fixed term contract does not have a guarantee that such a contract would be renewed. The mere expiry of the contract brings the relationship to an end. There need not be a notice of termination unless provided in the contract. Further the employer is under no obligation to assign reason for non-renewal of a fixed term contract. There may be a gap in the law in the area of fixed term contracts but that is the current state of the law.

15. The respondent attached all the contracts signed by the Claimant including the last one for 28<sup>th</sup> February, 2013 and stated that the Claimant was paid salary for March, as payment in lieu of notice. Further the salary vouchers attached by the respondent clearly showed the respondent paid the Claimant house allowance.

16. On the issue of underpayment, the contracts described the Claimant as General worker/Machine attendant. The minimum wage for a machine attendant in 2009 in Nairobi was Kshs. **6,948/=**. In 2010 it was Kshs. **7,643** in 2011 it was Kshs. **8,598** in 2012 it was Kshs. **11,085/=**.

17. In 2009 the Claimant received a basic pay of Kshs. **6,956/=**. In 2010 January he received a similar amount and in June presumably after issuance of the new wage order, he was paid Kshs. **7,652**. In 2011 the Claimant was paid Kshs. **8,598/=**. In 2012 it was Kshs. **9,898/=**, in 2012 it was Kshs. **9,898\**= and in 2013 February a similar amount. The payments made vis-a vis the gazetted minimum wage shows there was no under payment.

18. The Claimant in cross -examination denied he said that he never went on leave and that his main concern was underpayment which the Court has found did not take place.

19. The burden of proof that unfair termination of contract has occurred is on the employee, in this case the Claimant. From the foregoing it is clear that the Claimant has not discharged this burden. The claim is therefore found without merit and is hereby dismissed with costs.

20. It is so ordered.

Dated at Nairobi this 18<sup>th</sup> day of October, 2019

**Abuodha Jorum Nelson**

**Judge**

Delivered this 18<sup>th</sup> day of October, 2019

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**