



**REPUBLIC OF KENYA**

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

**AT NAIROBI**

**CAUSE NO. 1216 OF 2015**

**VENANSIO MBATARU KARIUKI.....CLAIMANT**

**VERSUS**

**ZAKHEM CONSTRUCTION KENYA LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 8th November, 2019)

**JUDGMENT**

The claimant filed a memorandum of claim on 10.07.2015 through Kabatia & Company Advocates. The claimant prayed for judgment against the respondent for:

- 1) Damages for wrongful and unlawful termination.
- 2) Compensation for one year salary.
- 3) Interest thereon on (1) and (2) above.
- 4) Any other relief the Court deems fit to grant, in the circumstances.

The respondent filed the reply to memorandum of claim on 07.08.2015 through Ndegwa Katisya Sionik & Associates Advocates. The respondent prayed that the memorandum of claim be dismissed with costs.

On 16.10.2019 by consent of the parties a partial judgment was entered for orders:

- 1) The termination was unlawful.
- 2) Parties to compromise on quantum.
- 3) Mention on 22.10.2019 at 9.00am to record further consent on quantum in default parties to file submissions on quantum.

The parties failed to agree on the quantum and the issue falls for determination by the Court.

Section 90 of the Employment Act, 2007 provides for factors to consider in awarding compensation for unfair termination. The claimant was employed as a Civil Engineer by the respondent on 15.09.2014 and the contract was to last for the entire KPL – Line 1 replacement project. The claimant worked for about 7 months and the contract of service was terminated on 04.05.2015. The respondent (on 04.05.2015) through the Managing Director one Ibrahim Zakhem asked the claimant to resign by 3.00pm failing unspecified action would be taken against the claimant. That was at a meeting at the Managing Director's office. At that meeting, the Managing Director had made inquiries on the status of the design and drawing approvals of the junction at Mariakani Camp and the claimant had offered the necessary explanation. However, the Managing Director was not satisfied and he asked the claimant to resign by 3.00pm or face unspecified action.

The claimant addressed to the Managing Director the email dated 04.05.2015 at 12.55pm thus, "**Our discussion in your office earlier today refers. I disagree with all you said about my work performance. Hence I will therefore not resign based on falsehoods. Therefore please do the needful by 3pm as you promised.**" The respondent then issued the letter of termination of employment dated 04.05.2015 terminating the claimant's employment immediately. The letter stated that the claimant would be paid one month in lieu of notice together with other final dues. The claimant was paid Kshs.623, 077.00 in terminal dues. The claimant has cited **Teresia Cario Omondi –Versus-**

**Transparency International –Kenya [2017]eKLR**, where Rika J held, “112. The Respondent had an obligation to respect the Claimant’s right to serve her full term, in accordance with the terms and conditions agreed between the Parties, and with due regard to the law governing that contract. There was an obligation to treat the Claimant fairly up to the very end. Fair dealing, between Employer and Employees, is not to be ignored on the ground that a fixed term contract is anyway coming to an end. The departure of the Employee is not to be hastened. The Claimant was hastily pushed out; and treated like one who had committed an employment offence, but was not told what her offence was. What did the respondent stand to lose by holding out until 30th September 2012?”

In this case by the consent order on record the respondent admits that the termination was unfair. The claimant was hastily thrown out of employment. He has not been shown to have contributed to his termination from employment. The Court has considered the short period of time he had served. The Court returns that in absence of any other factor, an award of 2 months’ salaries making Kshs.900, 000.00 will balance justice for the parties.

In conclusion judgment is hereby entered for the claimant against the respondent for payment of **Kshs.900, 000.00** by 31.12. 2019 failing, the respondent to pay interest thereon at Court rates from the date of this judgment till full payment.

**Signed, dated and delivered in court at Nairobi this Friday, 8th November, 2019.**

**BYRAM ONGAYA**

**JUDGE**