



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**  
**CAUSE NUMBER 933 OF 2016**

**BETWEEN**

**JULO MBANDI JULO.....CLAIMANT**

**VERSUS**

**ALI ABDALLA ABDUL RAHMAN t/a AL MADINA BUILDING**  
**CONSTRUCTION LTD .....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Matete Mwelese & Company Advocates for the Claimant*

*Respondent in Person*

---

**JUDGMENT**

1. The Claimant filed his Statement of Claim dated 9<sup>th</sup> September 2016. It is not clear from the Court Stamp when the Statement of Claim was filed. The Registry should place the Stamp on the unprinted spaces in the Pleadings, for clarity. Similarly the date of filing cannot be read from the receipt issued on payment of filing fees. The date is imposed on other prints on the receipt.

2. The Claimant states he was employed by the Respondent as a Casual Worker, in the year 2000. He was paid Kshs. 150 per day. He became Site Supervisor, and later in the year 2013, a Driver, earning Kshs. 350 per day. His contract was terminated by word of mouth by the Respondent, on 17<sup>th</sup> August 2015. He was not given a fair hearing or valid reason before termination. He prays for Judgment against the Respondent for:-

- a) 1 month salary in lieu of notice at Kshs. 10,500.
- b) Service pay for 14 years at Kshs. 63,700.
- c) Accrued annual leave for 14 years at Kshs. 102,900.

d) 12 months' salary in compensation for unfair termination at Kshs. 126,000.

e) Underpayment of salary at Kshs. 144,000

Total...Kshs. 447,100

The Claimant also prays for Certificate of Service to issue, and costs.

3. The Respondent filed a General Statement of Denial in response, on 12<sup>th</sup> April 2017. He did not otherwise attend Court, when required to do so. He did not file Submissions, the Court having directed that the Claim is considered and determined on the strength of the record.

4. The Claimant submits, it is admitted the Parties were in an employment relationship. The Claimant's contract was terminated without regard to procedural fairness and valid reason. He submits he merits notice pay; compensation; service pay of 14 years; accrued annual leave; underpayment of salary; and certificate of service.

**The Court Finds:-**

5. The Claimant was employed by the Respondent as a Casual Worker in the year 2000. He attached a register of Workers titled 'WAFANYI KAZI WA AL MADINA.' He is shown as having worked from February 2000. He became a Site Supervisor later. From 2013, he was a Driver. These facts are clear from the record.

6. It is also clear that the Claimant's contract was terminated by the Respondent, on 17<sup>th</sup> August 2015. This was done verbally by the Respondent, after a misunderstanding arose between the Parties, over the handling of the vehicle the Claimant had been assigned to drive.

7. The Respondent did not establish valid reason, for his decision to end his 14 year relationship, with the Claimant. He did not follow the requirements of fair procedure in ending that relationship. He failed in meeting the standards of fairness under Section 41, 43 and 45 of the Employment Act 2007. ***The Claimant is allowed the prayer for 1 month salary in lieu of notice at Kshs. 10,500. He is allowed compensation for unfair termination at the equivalent of 6 months' salary, at Kshs. 63,000.***

8. He states he was employed as a Casual Worker in 2000. He does not say when specifically he ceased to be a Casual Worker. It is not realistic for the Claimant to pursue accrued annual leave and service pay, based on a total period of 14 years. When he was in casual employment, he was not entitled to annual leave pay and service pay. He could freely stay away from work, without adverse consequences. There was no continuity, or requirement for continuity at work, while on casual employment. The years worked as Casual Worker cannot be creditable years, and cannot be part of accrued annual leave.

9. It is not clear when the Claimant ceased casual employment, or was converted into regular terms. He submitted nothing on this. It is noted that construction business, in which the Parties were involved, is hardly continuous.

10. The Court shall make an assumption for purposes of his remaining prayers that he was in regular employment, when he became a Driver in the year 2013, and started to earn Kshs. 350 per day, paid weekly.

11. He has not provided the Court with any Wage Orders, to support his prayers for underpayment of salary. The prayer is declined.

12. ***The prayer for accrued annual leave is granted, for the period 2013/2014 and 2014/2015, a period of 2 years, at Kshs. 16,961.***

13. The Respondent did not show he enlisted the Claimant in any social security scheme. ***The***

**Respondent shall pay to the Claimant, service pay based on 15 days' salary over a period of 2 years of service at Kshs. 12,115.**

14. **No order on the costs.**

15. **Certificate of Service to issue.**

IN SUM, IT IS ORDERED:-

**a) Termination was unfair.**

**b) The Respondent shall pay to the Claimant: notice pay at Kshs. 10,500; compensation for unfair termination at Kshs. 63,000; annual leave pay at Kshs. 16,961; and service pay at Kshs. 12,115- total Kshs. 102,576.**

**c) No order on the costs.**

**d) Certificate of Service to issue.**

Dated and delivered at Mombasa this 9<sup>th</sup> day of February, 2018

James Rika

Judge