



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT AT MOMBASA

CAUSE NUMBER 294 OF 2017

BETWEEN

LEMON WAWERU WANJIRU.....CLAIMANT

VERSUS

CHINA ROAD & BRIDGE CORPORATION (K) LTD

T/A CHINA ROAD AND BRIDGE CORPORATION.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

I R B Mbuya & Company Advocates for the Claimant

No appearance for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 21st April 2017. He states he was employed by the Respondent as a Tipper Driver, between 27th November 2015 and 2nd October 2016. He earned a gross monthly salary of Kshs. 32,099.90. His contract was terminated on 2nd October 2016 by the Respondent. The Respondent alleged that the Claimant was found ferrying goods, allegedly stolen from the Respondent, in Respondent's Truck. The Claimant avers termination was without notice, and was not based on valid reason. He prays for Judgment against the Respondent for:-

- a) 1 month salary in lieu of notice at Kshs. 32,099.90.
- b) Accumulated annual leave days over a period of 10 months and 6 days at Kshs. 19,099.44.
- c) Compensation for unfair termination at Kshs. 385,198.80.
- d) Certificate of Service to issue.
- e) Costs, interest and any other suitable relief.

2. There is an Affidavit of Service, sworn by Court Process Server Hassan Jeffa, on 15th May 2017, indicating the Respondent was served with Notice of Summons, Memorandum of Claim, and Supporting Documents. The Respondent did not file Response, and failed to attend Court at all times, when procedural directions issued. The Claim was heard by way of formal proof, on 28th February 2018.

3. The Claimant adopted in his oral evidence, his Witness Statement filed on 21st April 2017. He adopted his list of documents filed on the same date, which comprise pay slip, and demand letter issued to the Respondent before institution of the Claim.

The Court Finds:-

4. The Claimant has established he was employed by the Respondent as a Tipper Driver, on 27th November 2015. His contract was terminated by the Respondent on 2nd October 2016, on allegation of theft. He last earned a monthly salary of Kshs. 32,099.90.

5. The Respondent has not proved the reason, or reasons, justifying termination. There is no evidence that the Claimant was heard before termination. **Termination was unfair** under Section 41, 43 and 45 of the Employment Act 2007.

6. The Claimant worked for about 11 months. He had not, at the time of termination, become eligible for annual leave pay, under any of the provisions of Section 28 of the Employment Act 2007. He was not in a leave-earning period, at the time of termination. He had not completed 12 consecutive months to enjoy annual leave pay, or pro-rata leave during any subsequent leave-earning period.

7. **He is granted 1 month salary in lieu of notice, at Kshs. 32,099.**

8. Having served for approximately 11 months in total, there is no rationale in claiming the equivalent of 12 months' salary in compensation for unfair termination. **The Claimant is granted the equivalent of 5 months' salary in compensation for unfair termination at Kshs. 160,499.**

9. **The Respondent shall release to the Claimant his Certificate of Service forthwith.**

10. **Costs to the Claimant.**

11. **Interest granted at 14% per annum from the date of Judgment till payment is made in full.**

IN SUM, IT IS ORDERED:-

a) Termination was unfair

b) The Respondent shall pay the Claimant: 1 month salary in lieu of notice at Kshs. 32,099; and equivalent of 5 months' salary in compensation for unfair termination at Kshs. 160,499 – total Kshs. 192,598.

c) Certificate of Service to issue.

d) Costs to the Claimant

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

Dated and delivered at Mombasa this 20th day of March 2018.

JAMES RIKA

JUDGE