



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT KERICHO**

**Cause No. 27 Of 2017**

(Before D. K. N. Marete)

**LAWRENCE KARANI NJAGI.....CLAIMANT**

**VERSUS**

**CHINA RAILWAY ENGINEERING GROUP NO.10.....RESPONDENT**

**JUDGEMENT**

This matter was originated by way of a Memorandum of claim dated 24th May, 2017. It does not disclose any issue of dispute on its face.

The matter is not defended or at all. The respondent has not participated in its prosecution. This is despite service.

The claimant's case is that he was verbally dismissed by the respondent on 12th May, 2017 after a two year stint of service. At the time of dismissal, he worked at Mau Summit and earned Kshs.26,681.00 per month.

The claimant's other case is that his employment was prematurely and suddenly terminated without reason or notice before attainment of age 60 and to date he has not obtained any pay at all.

The claimant avers and asserts that the conduct of the respondent in termination his services were demeaning, illegal, embarrassing and punitive and the same should not be encouraged in civilized society.

The claimants other case is that he is aged forty (40) and is unlikely to secure employment in the absence of a Certificate of Service. Further he was terminated without a right of appeal nor issued with a termination letter. He claims loss of earning till age 60.

The claimant's penultimate case is that the respondent's action violates section 35, 41, 44, 45, 49 and 51 and is unlawful.

13. THAT the Respondent's action violates the employment Act Section 35, 41, 44, 45, 49 and 51. ARE unlawful, unwarranted and threatens the employment rights and fundamental freedoms of workers and denies the workers their right to earn a living is discriminative and violates the rights of the Claimant contrary to the constitution of Kenya.

He prays as follows;

i. Claims/prays for terminal dues as follows;

a. Terminal dues:- Last Gross Salary x 15 x 2 years

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*i.e*  $26,681 \times 15 \times 2 = 26,681/=$

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b. Leave days not take for 2 years  $(26,681 \times 2) = 53,362/=$

c. Compensation under Section 49 (c)

$$\text{Gross Salary} \times 12 \text{ months} - 26,681 \times 12 = 320,172/=$$

d. One month's Gross salary in lieu of notice =26,681/=

ii. A Certificate of Service as per Section 51 of the Employment act.

iii. Costs and interest.

iv. Any other relief this Honourable court may deem fit to grant.

The matter came to court variously until 17th July, 2018 when the claimant was ordered to serve his written submissions within seven days.

This matter is not defended, or at all.

The claimant in support of his case has annexed pay advice slip for the month of

April, 2017 and various letters of commendation indicating that he was employed by the respondent.

The claimant also annexes a Verifying Affidavit sworn on 2nd May, 2017 and a Statement under Order 3 Rule 2 (c) both of which authenticate the validity of the claim.

The issues for determination therefore are;

1. Was the termination of the employment of the claimant was wrongful, unfair and unlawful?

2. Is the claimant entitled to the relief sought?

3. Who bears the costs of this claim?

The 1st issue for determination is whether the termination of the employment of the claimant was wrongful, unfair and unlawful. In the absence of a defence, or any word to that extent, and on the evidence adduced by the claimant, I find that the termination of the employment of the claimant by the respondent was wrongful, unfair and unlawful. This answers the 1st issue for determination.

The 2nd issue for determination is whether the claimant is entitled to the relief sought. He is. Having won on a case of unlawful termination of employment, he becomes entitled to the relief sought.

I am therefore inclined to allow the claim and award relief as follows;

i. One (1) months salary in lieu of notice.....Kshs.26,681.00

ii.Six (6) months salary as compensation for

unlawful termination of employment = Kshs.26,681.00 x 6.....Kshs.160,086.00

**Total of claim.....Kshs.186,767.00**

iii. The respondent be and is hereby ordered to issue a Certificate of Service to the claimant within 30 days of this judgement of court.

iv. The costs of this claim shall be borne by the respondent.

v. The costs of the claim be and are hereby assessed at Kshs.60,000.00

**Delivered, dated and signed this 9th day of October, 2018.**

**D.K.Njagi Marete**

**JUDGE**

Appearances

1. Mr. Oumo instructed by Oumo & Company Advocates for the claimant.

2. No appearance for the respondent.