



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 596 OF 2013

JULIUS NYAMAI MULATIA.....CLAIMANT

VS

TWIGA CONSTRUCTION LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. This claim is brought by Julius NyamaiMulatia against his former employer, Twiga Construction Limited. The claim is documented by a Memorandum of Claim dated 29th April 2013 and filed in court on even date.

2. The Respondent filed a Defence on 28th June 2013 but did not attend the trial in spite of due notice. The Court therefore heard the Claimant *exparte*.

The Claimant's Case

3. The Claimant states that he was employed by the Respondent on 1st December 2010 as an ungraded artisan (mason). He earned a daily rate of Kshs. 450 which was paid weekly.

4. The Claimant claims that his employment was unfairly terminated on 30th July 2011. He adds that he was underpaid by Kshs.42.40 per day and that he worked during rest days and on public holidays, without compensation. Further, he was not paid monthly tools allowance.

5. The Claimant's claim is as follows:

- a) One month's salary in lieu of notice.....Kshs. 14,772.00
- b) Prorata leave for 8 months.....8,863.20
- c) Underpayment.....3,307.20
- d) 9 public holidays @ Kshs. 492.20.....4,431.60
- e) 37 weekly rest days @ Kshs. 492.20.....18,218.80
- f) Tools allowance @ Kshs. 125 per month.....1,000.00
- g) Costs plus interest

The Respondent's Case

6. In its Defence dated 28th June 2013 and filed in court on even date, the Respondent states that the Claimant was employed on 20th December 2010 and not 1st December 2010 as pleaded.

7. The Respondent denies underpaying the Claimant and adds that he was given one rest day per week and did not work on public holidays.

8. The Respondent admits owing the Claimant one month's pay in lieu of notice as well as 15 days in leave pay.

Findings and Determination

9. Apart from the claims for notice and leave pay which are admitted by the Respondent in its Defence, the Claimant claims underpayment and compensation for working on public holidays and weekly rest days. He also claims tools allowance at Kshs. 125 per month.

10. All these claims are in the nature of special damages which must be specifically proved. Apart from his word, the Claimant did not provide any evidence to support any of these claims which therefore fail and are dismissed.

11. The claims for notice and leave pay are however admitted and are payable.

12. I therefore enter judgment in favour of the Claimant as follows:

a) One month's salary in notice pay.....Kshs. 13,500

b) Prorata leave for 8 months (13,500/30x1.75x8).....6,300

Total.....19,800

13. This amount will attract interest at court rates from the date of filing suit until payment in full.

14. Each party will bear their own costs.

15. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 17TH DAY OF DECEMBER 2018

LINNET NDOLO

JUDGE

DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2018

MAUREEN ONYANGO

JUDGE

Appearance:

Mr. Okemwafor the Claimant

No appearance for the Respondent