



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 426 OF 2016
MUSYOKA MUSAU CLAIMANT
VERSUS
PRIME STEEL MILLS LIMITED RESPONDENT

Mr. Ngumbao for
claimant

JUDGMENT

1. The claimant seeks a declaration that he is entitled to payment of his terminal benefits including;
 - a) one (1) month salary in lieu of notice Kshs.15,360;
 - b) payment of overtime and public holidays worked; and
 - c) award of compensation for wrongful termination of employment;
 - d) costs and interest.
2. The claimant was paid a daily wage of Kshs.512.00 paid weekly and worked continuously for a period of eight (8) years from February 2008 to 11th January 2016 when his employment was terminated.
3. The claimant testified that he was not a casual employee, he was thus entitled in terms of the Employment Act, 2007 to be given notice upon termination and to be given a valid reason for the intended termination and opportunity to show cause why his employment should not be terminated.
4. The claimant testified that he was not given notice of termination nor was he given leave for the entire period of service. He claims in respect thereof.

5. Determination

(i) Overtime

The court however finds that the claim for unpaid overtime during normal working hours at four hours a day for the period worked has been proved on a balance of probability since no defence was offered to the claim even though service of the statement of claim and summons was proved by filing a return of

service. Overtime worked during public holidays was not proved and same is dismissed.

(ii) Leave

The claimant was not granted leave for the entire period of work. This was a continuous injury up to the date of dismissal.

The claimant is awarded Kshs.86,016 in lieu of unpaid leave days.

(iii) Compensation

The evidence by the claimant that he was not given notice, notice to show cause, a valid reason for the intended termination and opportunity to appear before a disciplinary panel is not contradicted there being no defence to the suit. The court finds that the summary dismissal was in violation of section 45 of the Employment Act, and the claimant is entitled to compensation in terms of section 49 of the Employment Act.

The claimant worked for a period of eight (8) years. He was denied leave and was treated as a casual for the entire period contrary to the law. The claimant suffered loss and damage. He did not contribute to the dismissal and was not paid any terminal benefits upon termination. The court awards the claimant ten (10) months salary as compensation for the wrongful and unfair dismissal in terms of section 49 (1) (c) of the Act in the sum of Kshs.153,600.

(iv) Notice pay

The court further awards the claimant Kshs.15,360 being one (1) month's salary in lieu of notice.

6. The final orders of the court are as follows:

Judgment is entered in favour of claimant against the respondent as follows;

a) Kshs.153,600 being ten (10) months salary compensation;

b) Kshs.15,360 in lieu of notice;

c) Kshs.86,016 in lieu of unpaid leave days;

d) Kshs.1,474,560 being overtime calculated at four (4) hours per day for the entire period of work;

Total award Kshs.1,729,536.

e) interest at court rates from date of filing suit;

f) costs of the suit.

Dated and delivered at Nairobi this 20th day of January 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE