



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NUMBER 766 OF 2014

MARTIN SHUMWE OKWARO.....CLAIMANT

VERSUS

PURUSHOTTAM ENTERPRISES LTD.....RESPONDENT

JUDGEMENT

1. The claimant sought judgement of this court against the respondent for payment of his terminal dues as well as compensation for what he felt was unfair termination of his services. The particulars of the claim were set out at paragraph 8 of the memorandum of claim.
2. According to the claimant he was in June, 2011 employed by the respondent as an upgraded technician and worked diligently for the respondent at various construction sites in Nairobi until 8th January, 2014 when his services were terminated without notice and any reason. The claimant further pleaded that on the material date while waiting at the gate of the construction site, one of the respondent's directors Mr Ramji told him to go away as the company did not have enough work for most of its Workers. He reported the termination to the Ministry of Labour who directed the respondent to pay his dues but the respondent neglected to do so. The respondent on its part admitted to employing the claimant but stated such employment was intermittent and casual. The claimant's wages were paid weekly.
3. The respondent denied the claimant worked continuously for the entire period pleaded and stated that the claimant disappeared on his own volition and when he came back was requested to wait until a new contract was acquired since the one the respondent had, had been completed. In his oral evidence in court the claimant confirmed he used to work for the respondent as a general worker at various construction sites at a daily wage of Kshs 365/=. The wages were paid weekly.
4. According to him, he went on leave in December, 2013 and was to resume on 6th January, 2014 but when he reported he found a notice saying there was no more work. He asked the security guard who confirmed the same to him. The boss told him to go home he would be called. He asked to be paid his terminal dues but did not get any response. He therefore reported the issue to the Labour Office.
5. The facts of this case presents themselves to me as a case of unlawful declaration of redundancy. The claimant having worked for the respondent for an aggregate period exceeding one month became a regular employee by virtue of section 37 of the Employment Act. Provisions applicable to regular employees including declaration of redundancy applied to him with equal measure.
6. Section 40 of the Employment Act makes provisions for termination of employment on account of

redundancy. From the evidence and material laid before me, the respondent admitted the claimant's services were terminated for lack of work but no evidence or material has been laid before me to show the respondent compensated the claimant as provided by law.

7. The court therefore enters judgement against the respondent as follows;

	Kshs.
a) One month's salary in lieu of notice	8,760
b) Severance pay at the rate of 15 day pay for each completed year of service	10,950
c) Eight months salary as compensation for unfair termination of services <u>70,080</u>	
	<u>89,790</u>
d) Costs of the suit.	

8. Claims for underpayment, leave and house allowance are disallowed as no material or evidence was tendered in support thereof.

9. It is so ordered.

Dated at Nairobi this 17th day of February, 2017

Abuodha J. N.

Judge

Delivered this 17th day of February, 2017

In the presence of:-

Ashibwe for the Claimant and

No appearance for the Respondent.

Abuodha J. N.

Judge