



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 208 OF 2014**  
**LEONARD JUMA KWANUSU .....CLAIMANT**  
**VERSUS**  
**M/S. YAMINI BUILDERS LIMITED.....RESPONDENT**

Okemwa for claimant

**JUDGMENT**

1. Suit was brought vide a statement of claim dated 18.2.2014. The claimant seeks compensation for unlawful and unfair termination of employment and payment of terminal benefits set out in the statement of claim as follows:

- (a) 30 days salary in lieu of notice Kshs.11,370/=
- (b) 65.25 accrued leave days in the sum of Kshs.24,740.30
- (c) Severance pay for two years and 32 days at Kshs.379.30 Kshs.12,132.60.
- (d) Under payment for wages in the sum of Kshs.14,802/=

2. The statement of claim is supported by verifying affidavit of the claimant and documentation produced as exhibits LJK I to IV.

3. The respondent did not file a memorandum of reply in spite of service with the summons and the memorandum of claim. M/s Mang'are Associates Advocates filed a notice of appointment on 5<sup>th</sup> June 2014 but did not take any further steps in the matter.

4. The claimant testified in support of his case as set out in the memorandum of claim and since the particulars of claim were not traversed by the respondent, the court finds that the terminal benefits sought have been proved on a balance of probability and the court awards the claimant accordingly.

5. With regard to the claim for compensation for unlawful termination of employment the court finds that the claimant worked for the respondent as set out in the memorandum of claim from August 2010 until the 22<sup>nd</sup> December 2012 when his services were terminated without a valid reason and without following a fair procedure. The claimant was not paid terminal benefits upon termination.

6. The termination of the employment of the claimant was contrary to the provisions of Section 43 of the Employment Act, 2007 as read with Section 45 of the Employment Act, 2007.

7. The claimant is entitled to compensation in terms of Section 49(1)(c) of the Act.

8. The claimant had served for two years and 32 days. The claimant had no adverse record and therefore did not contribute to the termination.

9. The respondent aggravated the situation by not giving the claimant notice of termination, not paying terminal benefits and by continuously underpaying the claimant.

10. The court awards the claimant six (6) months salary being compensation for the unlawful and unfair termination of employment.

11. The final orders of the court are as follows – judgment is entered in favour of the claimant as against the respondent for:-

(a) Kshs.11,370.00 in lieu of notice

(b) Kshs.24,740.30 in lieu of leave

(c) Kshs.12,132.60 gratuity

(d) Kshs.14,802.00 underpayment

(e) 6 months' salary being compensation for the unlawful and unfair termination in the sum of Kshs.69,000.00

(f) Total amount Kshs.132,290.15

(g) The amount is payable with interest at court rates from date of judgment till payment in full.

(h) Costs of the suit.

**Dated and delivered at Nairobi this 2<sup>nd</sup> day of March 2017**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**