



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT KERICHO**

**CAUSE NO. 267 OF 2015**

**(Before D. K. N. Marete)**

**JOSEPH AURA.....CLAIMANT**

**VERSUS**

**CHINA JIANGXI INTERNATIONAL (K) LIMITED.....RESPONDENT**

**JUDGEMENT**

This matter is originated by way of a Statement of Claim dated 30th November, 2015. It does not disclose an issue in dispute on its face.

The respondent in a Reply to Statement of Claim dated 15th February, 2016 denies the claim and prays that the same be dismissed with costs.

The claimant's case is that he was employed by the respondent on 15th August, 2014 as a Deputy Site Agent. This was by a contract of employment for one year ending on 15th August, 2015. He started on a salary of Kshs.220,000.00. At the time of termination he earned Kshs.271,000.00 a month.

The claimant's further case is that by a letter dated 14th January, 2015, he was transferred from Mbitha Cause Way Replacement and approaches Roads to Chebiyemit – Kapsowar Road Construction Site with effect from 24th January, 2015. He worked here up to 5th March, 2015 when his employment was unlawfully, unfairly and unprocedurally terminated. This is as follows;

- a. Failing to issue the Claimant with a notice to show cause*
- b. Failing to grant the Claimant a hearing before terminating his employment*
- c. Failing to issue the Claimant a termination notice*
- d. Failing to pay the Claimant a month's salary in lieu of termination notice.*
- e. Failing to pay the Claimant his terminal dues.*

The claimant's other case is that he was not issued with a certificate of service on termination. He prays as follows;

- i. A declaration that termination of the Claimant's employment by the Respondent was unfair,*

*unlawful and procedural*

*iii. Damages as set out hereunder;*

*a. Damages for unlawful termination*

*of employment (12 month salary) .....Kshs.3,252,000/=*

*b. Gratuity (1 month salary.....Kshs.271,000/=*

*c. One month salary in lieu notice.....Kshs.271,000/=*

*d. Payment in lieu of leave not taken .....Kshs.271,000/=*

*e. Salary for the remaining*

*Contract period (5 months).....Kshs.1,355,000/=*

***TOTAL .....Kshs.5,420,000/=***

*iii. An order of mandatory injunction directing the Respondent to issue the Claimant with a Certificate service*

*iv. Costs of this suit plus interest at court rate until payment in full.*

*v. Any other or further orders that the Court may deem fit to grant.*

The respondent's case is a denial of the claim. It is her case that the terms of the employment contract dated 4th August, 2014 *inter partes* provided that on transfer, a new contract was to be executed to express the new terms of contract *inter partes*.

It is the respondent's further case that upon transfer, the claimant absconded work forcing her to terminate the contract. The claimant had been severally warned verbally and through text message but did not heed therefore necessitating termination of employment as per the law.

The issues for determination therefore are;

1. Whether the termination of the employment of the claimant by the respondent was wrongful, unfair and unlawful?
2. Whether the claimant is 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 by the respondent was wrongful, unfair and unlawful. The claimant in his written submission dated 31st January, 2017 brings out a case of unlawful termination of employment. He bases this on the ground that the claimant was never awarded a hearing or taken through disciplinary process prior to termination of his employment. There was therefore no substantive and procedure or fairness in his termination thus flouting section 41 of the Employment Act, 2007.

Again, the respondent does not substantially establish a case of lawful termination of employment. She largely relies on evidence of text messages in support of her warnings to the claimant for his alleged misconduct of abscondment from duty. The claimant however controverts this by submitting that the respondent questions the same data at page 4 of her written submissions.

The claimant further submits that it is not part of the contract of his employment that this was intended to be renewed on transfer. This is not supported by any evidence by the respondent or at all. Again, the claimant faults introduction of the issue of quitting in the respondents submissions which issue was not pleaded *ab initio*. This is attributed to the respondent's desperation in proving her case.

Lastly, the respondent does not come out to contradict the submission by the claimant that her witness statements, list of documents and phone records produced by the respondent in support of her case are falsified and ingenuine. This considerably dents the respondent case and in all, I find a case of unlawful termination of the employment of the claimant by the respondent. And 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 is entitled to relief sought.

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

- i. One (1) months salary in lieu of notice .....Kshs.271,000.000
- ii. Five (5) months salary as compensation for unfair termination of employment Kshs.271,000.000 x 5 months....Kshs 1,355,000.00
- TOTAL.....Kshs.1,626,000.00**
- iii. The cost of this claim shall be borne by the respondent

Delivered, dated and signed this 26th day of April 2017.

**D. K. Njagi Marete**

**JUDGE**

Appearances

1. Mr. Isiji instructed by Nyairo & Company Advocates for the Claimant
2. Mr. Koko instructed by Obondo Koko & Company Advocates for the Respondent.