



REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR  
RELATIONS COURT AT MOMBASA  
CAUSE NUMBER 543 OF 2016  
**BETWEEN**  
CHARO HAMISI HEDISON.....CLAIMANT  
**VERSUS**  
CHINA ROAD & BRIDGE CORPORATION [KENYA]...RESPONDENT

*Rika J*

*Court Assistant: Benjamin Kombe*

*Mburu Kariuki & Company Advocates for the Claimant*

*No appearance for the Respondent*

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**JUDGMENT**

1. The Claimant filed his Statement of Claim on 14<sup>th</sup> July 2016. He states he was employed by the Respondent Company as a Driver on 26<sup>th</sup> February 2015. His Contract was terminated by the Respondent without notice and hearing, on 11<sup>th</sup> December 2015. He earned a monthly salary of Kshs. 48,900 as of the date of termination. He feels termination was unfair, and prays for Judgment against the Respondent for:-

- a) Salary for the month of December 2015 at Kshs. 48,900.
- b) 3 months' salary in lieu of notice at Kshs. 146,900.
- c) Compensation for unfair termination the equivalent of 12 months' salary at Kshs. 586,800.
- d) Dues for days worked in December 2016.
- e) Service Charge for the period worked.

f) Certificate of Service.

g) Costs and interest.

2. There is an Affidavit of Service filed by a Process-Server, showing Notice of Summons and Statement of Claim were served upon the Respondent and received by Miss Pauline on behalf of Respondent's Human Resources Manager Mr. Cheng Peng. There is an Affidavit of Service on record indicating the Respondent was served with a Hearing Notice. The Respondent opted not to file any response or attend Court on any occasion. The Claimant gave evidence by way of formal proof, on 14<sup>th</sup> June 2007.

3. He adopted the contents of his Pleadings and Witness Statement and list of Documents, in his evidence.

**The Court Finds:-**

4. The Claimant has established he was employed by the Respondent Company as a Driver, earning a monthly salary of Kshs. 48,900.

5. Among the documents he relies on are his regular Employees' Job Card, a Job Identity Card showing his designation as Dumper Driver, and pay slip issued in the name of the Respondent. These documents confirm the Claimant was an Employee of the Respondent.

6. There is no evidence to dispute his claim that he worked from 26<sup>th</sup> February 2015 to the date of termination, 11<sup>th</sup> December 2015. Termination was at the instance of the Respondent.

7. There was no notice and hearing before termination. The Respondent did not justify its decision under Section 43, 45 and 47 of the Employment Act 2007. The Claimant was not given a hearing. Termination was not based on valid reason and fair procedure. It was unfair.

8. The Claimant worked for 10 months. His prayer for 12 months' salary in compensation for unfair termination is discordant with the length of his service with the Respondent.

**9. He is granted the equivalent of 5 months' salary in compensation for unfair termination at Kshs. 244,500.**

10. He has not shown the Court any material, justifying the prayer for 3 months' salary in lieu of notice.

**11. He is granted 1 month salary in lieu of notice under Section 36 of the Employment Act 2007, at Kshs. 48,900.**

12. He worked for 11 days in December 2015. He has no justification, in demanding salary for the whole of December 2015, in addition to salary for 11 days worked on that month.

**13. He is granted salary for 11 days worked in December 2015 at Kshs. 20,688.**

14. Service charge is paid to Employees serving in hotels and restaurants. The Respondent is a construction business. The Claimant has not shown that service charge was payable to him as a Dumper Driver, serving a road and bridge construction business. The prayer for service charge is rejected.

15. The prayers for Certificate of Service, Costs and Interest, are allowed.

IN SUM, IT IS ORDERED:-

**a) Termination was unfair**

**b) The Respondent shall pay to the Claimant the equivalent of 5 months' salary in compensation**

*for unfair termination at Kshs. 244,500; 1 month salary in lieu of notice at Kshs. 48,900; and salary for 11 days worked in December 2015 at Kshs. 20,688 – total Kshs. 314,088.*

*c) Certificate of Service to issue.*

*d) Costs to the Claimant.*

*e) Interest granted at 14% per annum from the date of Judgment, till payment is made in full.*

**Dated and delivered at Mombasa this 27<sup>th</sup> day of June 2017.**

**James Rika**

**Judge**