



REPUBLIC OF KENYA
 IN THE EMPLOYMENT AND LABOUR
 RELATIONS COURT AT MOMBASA
 CAUSE NUMBER 826 OF 2016

BETWEEN

SAMUEL KIPKEMOI LANGA'TCLAIMANT

VERSUS

CHINA ROAD & BRIDGE CORPORATION [KENYA]...RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

J.K. Mwarandu & Company Advocates for the Claimant

No appearance for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim on 18th October 2016. He states he was employed by the Respondent Company in February 2016, as a Driver. His Contract was terminated by the Respondent on 7th September 2016, without notice or valid reason. As at the time of termination, he earned a gross monthly salary of Kshs. 43,456. He feels termination was unfair, and seeks Judgment against the Respondent for:-

- a) A declaration that termination was unfair.
- b) 2 months' salary in lieu of notice at Kshs. 86,912
- c) Equivalent of 12 months' salary in compensation for unfair termination at Kshs. 521,473

TotalKshs.651,841

d) costs

e) Any other suitable relief.

2. There are on record Affidavits of Service sworn by a Process-Server, showing the Respondent was served with Notice of Summons, the Statement of Claim and Hearing Notice. The Respondent did not make an appearance and failed to attend Court throughout. The Claimant gave evidence by way of formal proof, on 13th June 2017.

3. He reiterated the averments contained in his Pleadings and Witness Statement. He adopted copies of documents attached to the Statement of Claim as his exhibits.

The Court Finds:-

4. The Claimant has formally shown he was employed by the Respondent Company as a Driver in February 2016. He worked for 7 months. His contract was terminated by the Respondent without notice or justification. He last earned a monthly gross salary of Kshs. 43,456.

5. He has shown termination was unfair, as required under section 47 of the Employment Act 2007. The Respondent gave no evidence, and filed nothing to justify termination under this provision. Termination was not based on valid reason or reasons under Sections 43 and 45 of the Employment Act 2007. The Claimant was not accorded any hearing before termination, as required under Sections 41 and 45 of the Act. Termination was unfair.

6. His rate of monthly pay is not disputed.

7. ***He is granted 1 month salary in lieu of notice, at Kshs. 43,456.***

8. He served the Respondent for 7 months. His demand for 12 months' salary in compensation for unfair termination, is not in consonance with his length of service.

9. ***He is granted 3 months' salary in compensation for unfair termination, at Kshs. 130,368.***

10. ***Costs to the Claimant.***

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

12. Although the Claimant does not expressly pray for release of his Certificate of Service by the Respondent, he lists its withholding by the Respondent, as one of the particulars of breach under paragraph 10 of the Claim.

13. Under the prayer for any other suitable relief, the Court orders the Respondent shall release to the Claimant his Certificate of Service under Section 51 of the Employment Act 2007.

IN SUM, IT IS ORDERED:-

a) It is declared termination was unfair

b) The Respondent shall pay to the Claimant 1 month salary in lieu of notice at Kshs. 43,456 and the equivalent of 3 months' salary in compensation for unfair termination at Kshs. 130,368 – total Kshs. 173,824.

c) Costs to the Claimant.

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

e) Certificate of Service to issue.

Dated and delivered at Mombasa this 23rd day of June 2017

James Rika

Judge