



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA

CAUSE NUMBER 197 OF 2016

BETWEEN

GEORGE MUYESI MBARU..... CLAIMANT

VERSUS

ARM CEMENT formerly known as ATHI RIVER LIMITED..... RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Mwaure & Mwaure Waihiga Advocates for the Claimant

No appearance for the Respondent

JUDGMENT

1. The Claimant George Muyesi Mbaru, filed his Statement of Claim on 17th March 2016. He states he was employed by the Respondent Mining Company as a Stone Breaker, on 18th June 2007. He earned a daily wage of Kshs. 252. His contract was terminated by the Respondent, on 13th March 2013. Termination was without notice, or valid reason. The Respondent alleged to have employed another Employee. He was not given annual leave, or compensated in lieu thereof. He claims he worked on holidays without pay.

2. He claims from the Respondent for 1 month wages in lieu of notice at Kshs. 6,552; annual leave pay over a period of 5 years at Kshs. 26,460; public holiday pay of 5 years at Kshs. 25,200; service pay for 5 years at Kshs. 18,900; and compensation the equivalent of 12 months' wages at Kshs. 78,624 – total Kshs. 155,736.

3. There are affidavits of service filed by different Process-servers, showing the Respondent was served with the Notice of Summons, the Statement of Claim and various Mention Notices. The Respondent filed nothing in response and did not attend Court on any occasion. The Claimant gave evidence by way of formal proof, at Malindi on 6th June 2017.

4. The Claimant restated the contents of his Pleadings and Witness Statement, in his oral evidence. He gave an outline of his employment history, his grievances and prayers against the Respondent. He exhibited several documents, including an Internal Memo issued to him by the Respondent on 28th March

2013, allowing him into the Respondent's premises to collect his terminal dues. He also exhibited N.S.S.F Statements, showing the Respondent remitted a total sum of Kshs. 7,600 in contributions, over a period of 2 years.

The Court Finds:-

5. There is sufficient evidence to show the Claimant was employed by the Respondent as Stone Breaker, earning a daily wage of Kshs. 252. His contract was terminated by the Respondent on 13th March 2013. No notice was given to the Claimant. No valid reasons were given in justifying termination. There was no hearing. The Respondent did not observe Section 41, 43 and 45 of the employment Act. Termination was unfair.

6. The Claimant has established that he merits the equivalent of 12 months' wages in compensation for unfair termination at Kshs. 78,624; 1 month wages in notice pay at Kshs. 6,552; and annual leave pay at Kshs. 26,460.

7. He is granted service pay at 15 days' wages for 5 years of service at Kshs. 18,900, less social security payment of Kshs. 7,600 available under N.S.S.F, at Kshs. 11,300.

8. There is no sufficient support in fact to establish the sum claimed as holiday pay. The item is rejected.

9. Costs and interest granted to the Claimant.

IT IS ORDERED:-

a) It is declared termination was unfair.

b) The Respondent shall pay to the Claimant 12 months' wages in compensation for unfair termination at Kshs. 78,624; 1 month wages as notice pay at Kshs. 6,552; annual leave pay at Kshs. 26,460; and service pay at Kshs. 11,300 – total Kshs. 122,936.

c) Costs to the Claimant.

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

Dated and delivered at Mombasa this 9th day of June 2017.

James Rika

Judge