



REPUBLIC OF KENYA
 IN THE EMPLOYMENT AND LABOUR
 RELATIONS COURT AT MOMBASA
 CAUSE NUMBER 199 OF 2016

BETWEEN

MWANGOVI NGALA KAMBI.....
 CLAIMANT

VERSUS

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

Rika J

Court Assistant: Benjamin Kombe

Mwaure & Mwaure Waihiga Advocates for the Claimant

No appearance for the Respondent

JUDGMENT

1. Mwangovi Ngala Kambi was employed by the Respondent Company as a Stone Breaker, in February 2009, earning a daily wage of Kshs. 242. His contract was terminated by the Respondent in March 2013. He states he was not given notice, or valid reason for the decision. He was merely advised another Employee had been recruited to perform his role. He was not heard before termination. He feels termination was unfair and unlawful, and prays for judgment against the Respondent for: 1 month wages in lieu of notice at Kshs. 6,292; unpaid annual leave for 4 years at Kshs. 20,328; public holidays of 4 years at Kshs. 19,360; and 12 months' wages in compensation for unfair termination at Kshs. 75,504 – total Kshs. 121,484.
2. The Respondent was served with the Notice of Summons, Statement of Claim, Mention Notices but neither filed any response, nor attended Court on any occasion. The Claimant gave evidence by way of formal proof earlier today.
3. He adopts his Pleadings, Documents and Witness Statement on record.

The Court Finds:-

4. The Claimant has demonstrated he was employed by the Respondent Company as a stone Breaker,

earning a daily wage of Kshs. 242. He worked for 4 years, between 2009 and 2013. His contract was terminated by the Respondent without notice and just cause. He was not heard before termination. The Respondent did not observe the standards of fairness in termination of employment, required under Section 41, 43 and 45 of the Employment Act. Termination was unfair.

5. He was denied annual leave. He has established he was paid nothing in lieu of annual leave, and in lieu of notice. He merits compensation for unfair termination.

6. He has however not satisfied the Court with regard to his claim for public holidays' pay. The specific holidays have not been identified. The mode of computation of holiday pay is not based on any wage instrument. This item is rejected.

7. The prayer for Public Holiday Pay has not been formally proved. The Claimant failed to name the specific holidays when he worked. He did not show the mode of computation, resulting in the sum of Kshs. 40,320, claimed as holiday pay.

IN SUM, IT IS ORDERED:-

a) Termination was unfair.

b) The Respondent shall pay to the Claimant 12 months' wages in compensation for unfair termination at Kshs. 75,504; 1 month wages in lieu of notice at Kshs. 6,292; and 84 days of annual leave pay at Kshs. 20,328 – total Kshs. 102,124.

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