



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 198 OF 2016

BETWEEN

ZIRO CHONDO..... CLAIMANT

VERSUS

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

Rika J

Court Assistant: Benjamin Kombe

Mwaure & Mwaure Waihiga & Company Advocates for the Claimant

No appearance for the Respondent

JUDGMENT

1. Ziro Chondo, filed his Statement of Claim on 17th March 2016. He states he was employed by the Respondent Mining Company on 21st March 2005 as a Lime Kiln, or in common parlance, Stone Breaker. He was paid Kshs. 252 per day as wages.
2. His contract was terminated by the Respondent, on 13th March 2013. No reason was given for the decision. There was no notice, or pay in lieu thereof. He was not allowed to take his annual leave or compensated for not taking his annual leave. He feels termination was unfair, and prays for Judgment against the Respondent for the following:-
 - a. 1 month wages in lieu of notice at Kshs. 6,552.
 - b. Annual leave pay over a period of 8 years at Kshs. 42,336.
 - c. Public Holidays pay of 8 years at Kshs. 40,320.
 - d. Service pay for 8 years at Kshs. 30,240.
 - e. Compensation the equivalent of 12 months' wages at Kshs. 78,624.

Total.....Kshs. 198,072

f. Costs and Interest.

g. Declaration that termination was unfair.

h. Any other suitable relief.

3. The Court record indicates the Respondent Company was served with Notice of Summons and Statement of Claim. Subsequently the Respondent was served with Mention Notices. The Respondent did not file anything in Response, and failed to attend court on all occasions. The Claim was scheduled for formal proof at Malindi. The Claimant gave his evidence, and closed his Case, on 6th June 2017.

4. He restated the contents of his Pleadings in evidence, giving an outline of his employment history, his grievances and prayers before the Court. He relied on various documents attached to the Statement of Claim, among them: Internal Memo issued by the Respondent on 28th March 2013, granting him permission to access Respondent's Human Resources Office, to collect his terminal dues; his letter of demand to the Respondent before filing the Claim; and his N.S.S.F. Statements.

The Court Finds:-

5. The Claimant has formally shown he was employed by the Respondent Company as a Stone Breaker. He was employed on 21st March 2005, earning a daily wage of Kshs. 252. His contract was unfairly terminated by the Respondent on 13th March 2013. It is not contested that the Claimant did not utilize his annual leave entitlement. The N.S.S.F records show no contributions were consistently made on his account by the Respondent. The total amount paid was Kshs. 2,800 over a period of 2 years. The Claimant worked for 8 years. As held in ***Elijah Kipkoros Tonui v. Ngara Opticians t/a Bright Eyes Limited [2014] e-KLR***, the Employee would be entitled to service pay less what is shown to have been payable, or paid, to him under the N.S.S.F. The Court seeks to enforce the Social Security Plan which confers greater benefit to the Employee at the end of service.

6. The Claimant is allowed the prayer for service pay at 15 days' wages for every year completed in service, less the amount of Kshs. 2,800 available to him under the N.S.S.F. This translates into Kshs. 30,240 less Kshs. 2,800 = Kshs. 27,440 in service pay.

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.

IT IS ORDERED:-

a. It is declared termination was unfair.

b. The Respondent shall pay to the Claimant the equivalent of 12 months' wages in compensation for unfair termination at Kshs. 78,624; annual leave pay at Kshs. 42,336; notice pay at Kshs. 6,552; and service pay at Kshs. 27,440 – total Kshs. 154,952

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