



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NUMBER 114 OF 2015

BETWEEN

MUEMA MUTIA YUUMA.....CLAIMANT

VERSUS

SOMSTAR TIMBERWORK LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Tindika & Company Advocates for the Claimant

No appearance for the Respondent

JUDGMENT

1. In his Statement of Claim lodged with the Court 6th March 2015, the Claimant avers he was employed by the Respondent Company as a Machine Operator in July 2008. He rose to become a Supervisor. His contract was terminated unfairly by the Respondent, on 30th June 2014. He was informed by the Respondent there was no more work. He was not paid terminal benefits. He prays for Judgment against the Respondent for:-

- a. 1 month salary in lieu of notice at Kshs. 12,000.
- b. Annual leave pay for the years 2009 and 2012 at Kshs. 24,000.
- c. Leave travelling allowance for 2009, 2010, 2011 and 2012 at the rate of Kshs. 3,600 per year, at Kshs. 14,400.
- d. Severance pay based on 6 years of service at Kshs. 36,000.
- e. The equivalent of 12 months' salary in compensation for unfair termination at Kshs. 144,000.

Total Kshs. 230,400

- f. Certificate of Service to issue.

g. Costs and interest.

2. There are Affidavits of Service on the record, indicating the Respondent was served with the Notice of Summons, the Statement of Claim, Mention and Hearing Notices at different times. There was no response of any sort filed, and no attendance in Court by the Respondent, on any occasion. The Claimant gave evidence, and closed his case, on 7th November 2016. He confirmed the filing of his Final Arguments at the last mention in Court, on 16th June 2017. He reiterated the contents of his Pleadings in his Evidence before the Court.

The Court Finds:-

3. Through his unchallenged Pleadings, Evidence and Submissions, the Claimant has demonstrated he was employed by the Respondent as a Machine Operator in July 2008; he left employment upon the advice of the Respondent that there was no more work for him, effective 30th June 2014; his last rate of pay was Kshs. 12,000 per month; and he was not paid terminal dues.

4. The reason given by the Respondent in justifying termination suggested there was a redundancy situation. The Respondent told the Claimant there was no more work for the Claimant. Section 40 of the Employment Act 2007 should therefore have guided the Respondent in making and carrying out its decision to declare Claimant's position redundant.

5. Severance pay should have been availed to the Claimant under the law, at a minimum of 15 days' salary for every complete year of service. **He is granted severance pay in this mode, based on 6 years of service, calculated at Kshs. 41,538.**

6. **Notice pay of 1 month is granted at Kshs. 12,000.**

7. It is clear the Respondent did not follow a fair procedure in making and executing its decision. The standards of fairness under Section 40, 43, and 45 of the Employment Act were not met. Termination was unfair. **The Claimant is granted the equivalent of 9.5 months' salary in compensation for unfair termination at Kshs. 114,000.**

8. He did not supply the Court with any employment record, or draw the attention of the Court to any provision of the law or wage regulation, availing to him leave traveling allowance of Kshs. 3,600 per year. He did not support this item in his Pleadings and Evidence. The prayer is declined.

9. He claims annual leave pay for the years 2009 and 2012, at Kshs. 24,000. He was entitled to a minimum of 21 days of annual leave, under Section 28 of the Employment Act 2007. He bases his prayer on 30 days of annual leave. There was no support on 30 days of annual leave in the Pleadings, Documents, Submissions and Evidence on record. **The Claimant is granted a minimum of 21 days under the Act, which for 2 years amounts to Kshs. 19,384, in annual leave pay.**

10. **Certificate of Service to issue.**

11. **Costs to the Claimant.**

12. **Interest granted at 14 % per annum from the date of termination till payment is made in full.**

IN SUM, IT IS ORDERED:-

a. *Termination was unfair.*

b. **The Respondent shall pay to the Claimant: severance pay at Kshs. 41,538; notice pay at Kshs. 12,000; equivalent of 9.5 months' salary in compensation for unfair termination at Kshs. 114,000; and annual leave pay at Kshs. 19,384- total Kshs. 186,922.**

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 14th day of July 2017.

James Rika

Judge