



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 498 OF 2013**  
**TIMOTHY MUSINZI ARULA ..... CLAIMANT**  
**VERSUS**  
**FRANCIS GICHANKA**  
**T/A SHOWCASE PROPERTIES LIMITED ..... RESPONDENT**

Mr. Okemo for claimant

**JUDGMENT**

1. By a memorandum of claim dated 3<sup>rd</sup> April 2013, the claimant seeks maximum compensation equivalent to twelve (12) months gross salary for unlawful and unfair termination of employment and payment of terminal benefits to wit;
  - a) One month's salary in lieu of notice in the sum of Kshs.20,800;
  - b) Service pay calculated at fifteen (15) days salary for each of the 6.5 years completed service; and
  - c) Payment in lieu of untaken annual leave for the 6.5 years of service.
2. The facts of the case are that the claimant was employed as a crane operator by the respondent on or about May 2006 at a weekly wage of Kshs.4,800 which translated to a monthly salary of Kshs.20,800. The claimant served the respondent diligently in that capacity until on 14<sup>th</sup> November when the respondent wrongfully and unfairly terminated the employment of the claimant.
3. The claimant testified under oath in support of his claim and adopted the memorandum of claim and the verifying affidavit sworn on 3<sup>rd</sup> April 2013.
4. The claimant relied further on annexures to the statement of claim.
5. The claimant states that he was not given annual leave for the 6<sup>1</sup>/<sub>2</sub> years he served and was not paid in lieu thereof.
6. That he was not given notice or any reason for termination and was not paid in lieu thereof.
7. The memorandum of claim was served on the respondent by Mr. Charles Mutua Mwanzi, an authorized

process server on 21<sup>st</sup> May 2013 and he did not enter appearance nor file a statement of defence.

8. The claim remains undefended therefore.

9. The claimant has proved on a balance of probability that his employment was terminated for no valid reason and without following a fair procedure contrary to sections 41, 43 and 45 of the Employment Act and the claimant is entitled to payment of the terminal benefits set out in the memorandum of claim in the sum of Kshs.124,800.

10. **The total award to the claimant as against the respondent is Kshs. 307,840.**

11. **The award of terminal benefits is payable with interest at court rates from date of filing suit till payment in full whereas the award of compensation is payable with interest at court rates from date of Judgment.**

12. **Costs to follow the outcome.**

**Dated and Signed at Nairobi this 18<sup>th</sup> day of August, 2017.**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**

**Dated, Delivered and Signed at Nairobi this 18<sup>th</sup> day of August, 2017.**

**JORAM NELSON ABUODHA**

**JUDGE**

**Delivered in the presence of:**

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