



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NUMBER 1393 OF 2014

MUSYOKA MUNUVECLAIMANT

VERSUS

MAVJI CONSTRUCTION LIMITED.....RESPONDENT

JUDGEMENT

1. The claimant herein averred that he was working for the respondent as a labourer at construction sites at a weekly wage of Kshs 600. According to him, he had been in the respondent's employment since July 2009 and worked until January 2009 when his services were terminated.
2. The claimant further averred that the claimant omitted to remit deductions from his pay to NSSF. The claimant further averred that he never went on leave for the period he worked.
3. The respondent denied the claimant's claim and averred that he was employed at a daily wage of Kshs 557/=. According to the respondent the claimant's first engagement with the respondent was on 14th August, 2013 as a casual employee and worked on and off between August and November, 2013.
4. In his oral evidence in court, the claimant stated that he was hired as a welder in 2009. At the time of termination they were told there was no more work. They were many of them.
5. From the short evidence adduced by the claimant, it cannot be denied he was a seasonal worker. The court takes judicial notice that the respondent herein is in the construction business hence the hiring of casual labourers in its various sites is not unusual.
6. The current position in law is that any person who though a casual labourer would for purposes of termination services be deemed as a regular employee where such persons engagement is for an aggregate period of more than one month. The claimant herein worked for the respondent for an aggregate period of 2 ½ months. He was therefore entitled to one months' notice of termination or payment in lieu thereof.
7. The court will therefore award the claimant:
 - a. One months salary in lieu of notice 16,710
 - b. Two months wages for unfair termination

of services

33,420

50,130

c. Cost of the suit.

8. It is so ordered.

Dated at Nairobi this 29th day of September, 2017

Abuodha J. N.

Judge

Delivered this 29th day of September, 2017

Abuodha J. N.

Judge

In the presence of :

.....Claimant

..... Respondent