



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 786 OF 2016
SYLVESTER OUMA ONDUU.....CLAIMANT
VERSUS
PRIME STEEL MILLS LIMITED.....RESPONDENT
Mr. Maina for claimant

JUDGMENT

1. Claimant seeks compensation for unlawful dismissal and payment of terminal benefits to wit;

- (i.) Service pay Kshs.21,285/=
- (ii.) Payment in lieu of Notice of Kshs.14,190/=
- (iii.) 6,480 hours over time Kshs.574,695/=
- (iv.) Payment in lieu of leave days not taken Kshs.42,570/=

2. The claim is based on the particulars of claim set out in the memorandum of claim filed on 6th May 2016 and annexures thereto. The claimant testified under oath and adopted a witness statement dated 16th February 2016 as his evidence in chief.

3. In summary, the claimant was employed by the respondent in March 2012 as a box charger and later a plate mason helper. He earned a daily wage of Kshs.473/= as at the time he left employment on 2nd October 2015.

4. The claimant did not have a written contract but worked continuously on a daily basis reporting at 7 a.m. in the morning until 7 p.m. in the evening for 7 days a week, including public holidays.

5. The claimant states that he was not paid any overtime for the extra hours worked above 8 hours per day and seeks to be paid as per the calculated overtime hours.

6. On 2nd October 2015, he reported to work as usual but was informed that those persons whose names were not on the notice board should not report to work. This was the end of his employment without notice, notice to show cause, any hearing or any reason attributed to the dismissal.

7. The claimant was not paid any terminal benefits upon dismissal and states that the dismissal was unlawful and unfair and in violation of Section 41, 43 and 45 of the Employment Act, 2007.

8. The respondent was served with the memorandum of claim and summons on 20th May 2016 and a return of service was filed on 3rd August 2016. The respondent did not enter appearance nor file any defence to the suit.

9. The claimant has proved the claim for unlawful and unfair dismissal and unpaid terminal benefits on a balance of probability and is awarded the terminal benefits as claimed.

10. With regard to compensation, the claimant is entitled to the same in terms of Section 49 (1) (c) as read with Section 49 (4) of the Act.

11. In this regard, the claimant had served the respondent diligently for about three years. He was unlawfully and unfairly dismissed from employment. Was not paid any terminal benefits and was dismissed without notice. The claimant suffered loss and damage as a result.

12. The claimant was not given a certificate of service to enable him get new employment. This is an aggravating factor.

13. The court has considered these circumstances to award the claimant equivalent of three months' salary as compensation for the unlawful and unfair dismissal in the sum of Kshs.42,570/=

14. In the final analysis judgment is entered in favour of the claimant as against the respondent;

(i.) For a sum of Kshs.695,310/=.

(ii.) Interest at court rates from date of judgment till payment in full.

(iii.) Respondent to provide the claimant with a certificate of service within 30 days of this judgment.

(iv.) Costs of the suit.

Dated, Signed and Delivered at Nairobi this 22nd day of September 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE