



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 91 OF 2017

BETWEEN

ANTHONY WANGAI KIRAGU CLAIMANT

VERSUS

CHINA ROAD AND BRIDGE CORPORATION.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Mburu Muriuki & Company Advocates for the Claimant

No appearance for the Respondent

JUDGMENT

1. Anthony Wangai Kiragu states in his Statement of Claim filed on 2nd February 2017, that he was employed by the Respondent Company as a Dump Truck Driver, on 6th March 2015. His contract was terminated by the Respondent on 14th September 2016. His last salary was Kshs. 55,930. He was based at Respondent's construction site at Miritini, Mombasa.

2. He was unfairly dismissed by Respondent's Site Manager, one Yei, on 4th September 2016. He was falsely accused by Yei of damaging leaf springs of Respondent's Truck. He was not heard before dismissal. He was not given any notice of termination. He was denied terminal dues. He prays the Court to grant him the following orders against the Respondent:-

- a. Notice pay at Kshs. 55, 930.
- b. Accrued annual leave for a period of 1 year and 7 months at Kshs. 22,834.
- c. 12 months' salary in compensation for unfair termination at Kshs. 671,160.
- d. Unpaid salary for September 2016 at Kshs. 55,930.
- e. Punitive damages.

f. Certificate of Service to issue.

g. Costs.

3. There is an Affidavit of Service on record, filed by Licensed Court Process Server, Julius Muthengi Muiyungi, indicating the Respondent was served with the Notice of Summons and the Statement of Claim, on 22nd February 2017. These processes were received by Respondent's Secretary, a Ms. Chao. The Respondent did not answer to the Claim. The Court has noted this is not the first Claim the particular Respondent has failed to answer. The Claimant was heard by way of formal proof, on 25th July 2017.

The Court Finds:-

4. There is on record adequate material to conclude the Claimant was employed by the Respondent Road and Bridge Engineering Company, as a Dump Truck Driver, on 6th March 2015. He was dismissed on 14th September 2016 on the allegation that he had damaged Respondent's Truck's leaf springs. He earned a monthly salary of Kshs. 55, 930 as of the date of dismissal. He was not given notice of termination. He was not presented with any charges, and required to answer those charges. He was not heard. The Respondent did not justify its decision as required under Section 43 and 45 of the Employment Act 2007. Procedure was unfair under Section 41 and 45 of the Act. The prayer for punitive damages is not supported by the facts and legal persuasion. It is rejected.

IT IS ORDERED:-

a. Termination was unfair.

b. The Respondent shall pay to the Claimant the total amount of Kshs. 805,854 as detailed in the Statement of Claim.

c. Certificate of Service to issue.

d. Costs to the Claimant.

Dated and delivered at Mombasa this 15th day of September 2017.

James Rika

Judge