



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**  
**CAUSE NUMBER 291 OF 2015**

**BETWEEN**

**CHARO RAI MBEGA .....**  
**CLAIMANT**

**VERSUS**

**YOGENDRA RAMANLAL RAWAL T/A ECONOMIC MAINTENANCE PRODUCTS .....**  
**RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Osoro Omwoyo & Company Advocates for the Claimant*

*Sichangi Partners, Advocates for the Respondent*

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**JUDGMENT**

1. In his Amended Statement of Claim filed on 7<sup>th</sup> December 2015, the Claimant seeks the following Orders against his former Employer, the Respondent herein:-

- a. 1 month salary in lieu of notice at Kshs. 16,770.
- b. Leave allowance for 26 years at Kshs. 436,020.
- c. 12 months' salary in compensation for unfair termination at Kshs. 201,240.
- d. Gratuity for 26 years at Kshs. 218,010.
- e. Deducted and unremitted tax at Kshs. 254,280.

Total..... Kshs. 1,126,320

- f. A declaration that the Claimant was employed on permanent basis.

- g. Overtime.
- h. House Allowance.
- i. Certificate of Service and Recommendation Letter.
- j. Costs.
- k. Interest.
- l. Any other relief.

2. He claims he was employed by the Respondent as a Gardener, Watchman and later on as Messenger or General Worker. He was employed in 1987. He was unfairly dismissed due to old age, on 25<sup>th</sup> September 2013. The Claimant was told by the Respondent he could not continue working as he had become old. He was not issued notice of termination. He was not paid any terminal dues. He worked for 26 years.

3. The Respondent does not deny the Claimant was his Employee, in the positions and period stated in the Claim. N.S.S.F and N.H.I.F dues were deducted and remitted to his accounts. Copies of receipts issued upon payment of contributions are exhibited in the Response. The Claimant lodged a complaint against the Respondent on 28<sup>th</sup> November 2013. Parties appeared before the Labour Officer on 19<sup>th</sup> December 2013. They reached settlement that the Claimant is paid notice pay of Kshs. 11,250.

4. The Claimant was heard in Court on 27<sup>th</sup> July 2016. He repeated what is contained in his Pleadings, emphasizing that he was paid notice pay on the advice of the Labour Officer, to pacify him. He conceded that the Respondent paid his contributions to N.S.S.F and N.H.I.F. He was 64 years on termination. He could be sent to run errands, but was no longer able to carry packages. He agreed it was in order to be retired as he was no longer able to discharge all tasks assigned to him, adding however that it was wrong to retire him without benefits.

5. Rawal was not able to give oral testimony due to ill health. It was agreed by Counsel for the respective Parties, on 21<sup>st</sup> March 2017, that Rawal's Witness Statement dated 6<sup>th</sup> October 2015, is admitted as his evidence. Proceedings were marked as closed upon admission of the Respondent's Witness Statement. Parties confirmed the filing of their Closing Submissions at the last mention on 12<sup>th</sup> June 2017.

**The Court Finds:-**

6. It is common ground the Claimant worked for Rawal and his enterprise for 26 years. He was retired due to advanced age. He was 64 years as of 25<sup>th</sup> September 2013, when retired.

7. He conceded he was no longer able to carry heavy packages, a role which was within his duty description. He felt he should have been allowed to go on working as a messenger.

8. The Court does not think termination was unfair. Parties agree the Claimant had reached an age at which he could no longer discharge his role in full. After 26 years, and at the age of 64 years, there was no reason for him to demand that he continues in employment. Although Parties do not seem to have agreed on retirement age, they agree the Claimant was not longer fully productive.

9. There are records exhibited by the Respondent to show the Claimant was actively subscribed to the N.S.S.F. He did not leave employment without social security. There is no basis for his prayer for gratuity pay.

10. He did not satisfy the Court on his prayer for leave allowance over a period of 26 years. There was no dispute on the nature of his employment to warrant the Court declaring that the Claimant was employed on permanent basis. The law does not require Employers to issue Employees letters of recommendation

on leaving employment. Section 51 of the Employment Act only requires an Employee is issued with a Certificate of Service. There was no evidence of overtime worked. The prayer for house allowance was un-detailed and given no support in evidence. Parties appeared before the Labour Officer where all issues in dispute were ventilated. The Court has no reason to agree with the Claimant that settlement at the Labour Office was meant to pacify him. It was a settlement arrived at lawfully, and which the Court endorses.

11. In summary the Court finds the Claim has no merit. *It is dismissed with no order on the costs.*

**Dated and delivered at Mombasa this 15<sup>th</sup> day of September 2017.**

**James Rika**

**Judge**