



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO 2027 OF 2013**

**PATRICK WAMBUA MUINDI.....CLAIMANT**

**VERSUS**

**METAL EQUIPMENT ENGINEERING CO. LTD.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. This claim is brought by Patrick Wambua Muindi against his former employer, Metal Equipment Engineering Company Limited. The claim is contained in a Statement of Claim dated 17th December 2013 and filed in court on even date.

2. The Respondent filed a Statement of Defence on 28th January 2014 but did not attend the hearing. The Claimant testified on his own behalf and also filed written submissions.

**The Claimant's Case**

3. The Claimant was employed by the Respondent as a welder, at a monthly salary of Kshs. 15,464, from 15th April 2011. He states that sometime in August 2012, he was assigned the duty of fitting metal pipes, a job he was not well conversant with, as it was not part of welding. The job delayed and the Respondent's Director, Jinu Matharu insulted the Claimant and told him his employment had been terminated.

4. The Claimant was required to leave the Respondent's premises immediately. He avers that he was not given any reason for the termination of his employment and that he was not given an opportunity to be heard. Further, the Respondent refused to pay him his terminal dues. He now claims the following:

- a) One month's salary in lieu of notice.....Kshs. 15,464
- b) Leave allowance.....7,732
- c) One year's salary for unfair termination.....185,568
- d) Salary for the month of August.....15,464
- e) Costs plus interest

**The Respondent's Case**

5. In its Statement of Defence dated 26th January 2014 and filed in court on 29th January 2014, the Respondent denies the Claimant's employment record as pleaded in the Statement of Claim.

6. The Respondent states that the Claimant was contracted to undertake specific welding and metal works as and when the need arose, on month to month basis. The Respondent adds that the Claimant was issued with numerous separate and distinct monthly contracts for specific work from 15th April 2011 until August 2012.

7. While denying the Claimant's claim for unfair termination, the Respondent avers that the Claimant was contracted for the month of July to perform specific welding works and that the contract lapsed in August 2012.

8. The Respondent disagrees with the Claimant's pleadings as to the events leading to termination of his employment and adds that the Claimant was paid all his dues.

**Findings and Determination**

9. There are two issues for determination in this case:

- a) Whether the Claimant has made out a case for unlawful and unfair termination of employment;
- b) Whether the Claimant is entitled to the remedies sought.

**Unlawful Termination?**

10. The Claimant pleads that he was unfairly terminated without a valid reason and in violation of due procedure. In its defence, the Respondent states that the Claimant was employed on specific and distinct contracts running from month to month. The Respondent produced two such contracts covering the months of July and August 2012. Nothing in these contracts suggests that the Claimant was not a regular employee of the Respondent. First, they provide for a monthly basic salary plus house allowance. Second, they provide for leave and service pay. These terms of service typically apply to employees on regular employment.

11. On his part, the Claimant produced pay slips for the entire period of employment. At any rate, the Respondent did not call any evidence to prove that the Claimant did not work throughout the employment period as pleaded in the Statement of Claim. The Court therefore adopts the Claimant's evidence in this regard.

12. Similarly, the Respondent did not adduce evidence to counter the Claimant's account of the events leading to the termination of his employment. The Claimant's evidence therefore remains unchallenged and the Court found no reason to disbelieve him. Consequently, the Court finds that the termination of the Claimant's employment was not only unjustifiable but also procedurally unfair and he is entitled to compensation.

**Remedies**

13. In light of the foregoing findings, I award the Claimant three (3) months' salary in compensation. In arriving at this award, I have taken into account the Claimant's length of service as well as the Respondent's conduct prior to the termination.

14. I further award the Claimant one (1) month's salary in lieu of notice and salary for the month of August 2012. According to the pay slips produced by the Claimant, he was paid leave pay on a monthly basis. There is therefore no claim pending on this account.

15. Ultimately, I enter judgment in favour of the Claimant in the following terms:

- a) 3 months' salary in compensation.....Kshs. 49,392
- b) 1 month's salary in lieu of notice.....15,464
- Total.....65,038

16. This amount will attract interest at court rates from the date of judgment until payment in full.

17. The Claimant will have the costs of the case.

18. It is so ordered.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 19TH DAY OF**

**OCTOBER**

**2017**

**LINNET**

**NDOLO**

**JUDGE**

**Appearance:**

**Mr.**

**Nyaberi**

**for**

**the**

**Claimant**

**No appearance for the Respondent**