



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NUMBER 1338 OF 2013

JULIUS MUIA WAMBUA.....CLAIMANT

VERSUS

NATHAN CONSTRUCTION COMPANY LIMITED.....RESPONDENT

JUDGMENT

1. In his memorandum of claim filed on 20th August, 2013 the claimant avers that he was employed by the respondent as a mason at a daily wage of Kshs.800/=. He commenced working on 20th September, 2009 and worked continuously until January, 2013 when according to him the respondent wrongfully terminated his services.

2. He therefore seeks an order for compensation for the Court as well as payment of his terminal dues.

3. The respondent though served never filed a defence or entered appearance to the claim hence the matter proceeded as an undefended cause.

4. At the hearing the claimant testified that he worked for the respondent for 3 years and 3 months. He stated that at times he would stay away when there was no work and would be called when work was found.

5. The matter having proceeded ex parte, the Court is constrained to rely on the testimony of a sole witness who himself is the claimant. From the claimant’s testimony he admitted he was seasonal worker and would at times stay away when there was no work and be called when a new construction site was found by the respondent. However, one fact that is clear is that the claimant worked for the respondent for a continuous period the aggregate of which was more than a month hence for purposes of termination he ought to have been treated as a regular worker which did not happen.

6. In the circumstances the Court will award him as follows:-

(a) One month’s salary in lieu of notice.....19,200.00

(b) Leave for 3 years.....40,320.00

(c) Service pay for 3 years.....28,800.00

(d) 3 months salary for unfair termination of services.....57,600.00

145,920.00

(e) Costs of the suit.

7. It is so ordered.

Dated at Nairobi this 19th day of February 2016

Abuodha J. N.

Judge

Delivered this 19th day of February 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge