



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1563 OF 2013

MICHAEL WANYERACLAIMANT

VERSUS

GULF ENERGY TRANSPORT LIMITEDRESPONDENT

JUDGEMENT

1. The suit was brought vide a memorandum of claim filed on 27th September, 2013.
2. The facts of the case are that the claimant was employed by the Respondent on 1st May 2012 as a driver at a monthly salary of

Kshs 20,000. The letter of appointment is annexed to the memorandum of claim as App 'A'.
3. The claimant worked diligently until 6th February 2013 when his employment was terminated on account of redundancy without notice or payment of terminal benefits.
4. The claimant wrote a demand letter on 22nd July 2013 which was not heeded to by the Respondent.
5. The claimant seeks for payment of:-
 - a) One month salary in lieu of notice in the sum of Kshs.25,300/=.
 - b) Payment in lieu of untaken leave days in the sum of Kshs.12,438/=.
 - c) Unpaid salary (underpayment) for 9 months at Kshs.2,500/= per month in the sum of Kshs.22,500/=.
 - d) Unpaid house allowance for 9 months at 15% of the basic salary in the sum of Kshs.29,700 and
 - e) Compensation for the unlawful and unfair termination of employment.
6. The Respondent entered appearance on 23rd October 2013 through Abdulrahwa Saad & Associates. The Respondent did not file any statement of defence nor did it attend the hearing of the case. The matter proceeded to formal proof ex-parte.
7. The Claimant testified under oath and was partly able to prove the particulars of claim. In

particular the Claimant was able to show on a balance of probabilities that the Respondent did not follow the laid down procedures under **Section 40 of the Employment Act, 2007** in declaring him redundant. The termination of the employment was therefore unfair and unlawful in that the claimant was not paid in lieu of notice, was not given one month notice to seek alternative employment, was not paid gratuity for the period served and therefore suffered loss and damage as a result thereof.

8. Accordingly the court awards the Claimant:-

1. Kshs.20,000 in lieu of one month notice in terms of **Section 49(1) as read with Section 49(4) of the Employment Act.**

2. The court awards the Claimant three months salary as compensation for the unprocedural and therefore unfair termination of employment in the sum of Kshs.60,000/=.

9. The Claimant was unable to prove on a balance of probability that he was entitled to house allowance over and above the monthly salary of Kshs.20,000/= paid to him. Equally, the Claimant was unable to prove that he was underpaid by Kshs.2,500/=. The letter of appointment produced by the Claimant did not provide for the above.

10. In the final analysis, the Respondent is to pay the Claimant;-

(i) Kshs. 20,000 in lieu of notice.

(ii) Kshs. 60,000 compensation.

Total award Kshs. 80,000.

(iii) Interest at Court rates from date of filing suit till payment in full.

(iv) Costs of the suit.

Dated and delivered in Nairobi this 1st day of April, 2016.

MATHEWS N. NDUMA

PRINCIPAL JUDGE