



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 1346 OF 2014**

**SYLVANUS KHAYASA KHASIALA.....CLAIMANT**

**VERSUS**

**GAO YU INTERNATIONAL CO. LIMITED.....RESPONDENT**

**JUDGMENT**

1. The claimant herein opted to adopt his statement filed on 29<sup>th</sup> of July 2016 and be cross-examined on it by the respondent's counsel. The respondent's counsel on the other hand chose not to call any witness and instead proceeded to file submissions.
2. In his statement the claimant stated that he was employed by the respondent as a Mason on or about 10<sup>th</sup> July, 2012 and worked up to 23<sup>rd</sup> July, 2013. He was never issued with any appointment letter. His daily wage was Kshs.500/- per day without any statutory deductions for NSSF and NHIF. They used to sign up for work each morning at 7.30 a.m. and work until 5.00 p.m. with one hour break for lunch. He further stated that their wages were paid in the evening the following day to ensure they reported to work the following day. It was further his evidence that the respondent made overtime compulsory but was never paid for the same and when he inquired the respondent started harboring bad blood against him.
3. The claimant also stated that he worked for the entire period without any off day until his body became weary and he became sick. He denied that he worked only for 43 days as alleged by the respondent. He stated further that he took a rest day in July, 2013 and upon resuming he was terminated by the sit manager.
4. In cross examination he stated that he did not agree with the respondent he would be away on leave for how long. He further stated that he was unwell but never asked for a sick off and further that he had nothing to show he was unwell during the period he was away.
5. From the evidence it is in no doubt that the claimant worked on daily wage for an aggregate period exceeding one month. In the circumstances, the deeming provisions of section 37 of the Employment Act applied to him for purposes of termination of his services. The claimant conceded to absenting himself from work without permission and further that he did not have anything to show he was unwell and could not come to work. These formed good grounds for terminating the claimants services however in doing so the respondent was obliged to adhere to provisions of section 35(1) (c) of the Employment Act. That is to say the claimant was entitled to one month's notice of termination or payment in lieu thereof. Further the respondent was obliged to inform the claimant that his services were being terminated on account of absenting himself from work without lawful cause and not being refused to work as happened

here.

6. The Court therefore finds and awards the claimant as follows:-

Kshs.

(a) One month's pay in lieu of notice.....	15,000.00
(b) 3 months salary for unfair termination of services.....	45,000.00
(c) Salary for 23 <sup>rd</sup> July, 2013.....	500.00
(d) Service pay.....	7,500.00
(e) Leave pay.....	<u>10,500.00</u>
	<u>78,500.00</u>

7. The claimant shall further have the costs of the suit.

8. It is so ordered.

Dated at Nairobi this 9<sup>th</sup> day of September 2016

**Abuodha Jorum Nelson**

**Judge**

Delivered this 9<sup>th</sup> day of September 2016

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha Jorum Nelson**

**Judge**