



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

CAUSE NO.11 OF 2016 CONSOLIDATED WITH CAUSE NO. 12 OF 2016

MOSES MURIITHI NJUE.....1ST CLAIMANT

DAVID MURIUKI NJERU.....2ND CLAIMANT

CHARLES KATHUNI NJIRU.....3RD CLAIMANT

VERSUS

CHINA OVERSEAS ENGINEERING

GROUP COMPANY LIMITED (COVEC).....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 7th October, 2016)

JUDGMENT

The claimants filed their respective statements of claims against the respondent through Victor L. Andande & Company Advocates. The claimants prayed for judgement against the respondent upon claims for one month pay in lieu of termination notice, unpaid and untaken leave, salary arrears, and damages for unlawful and unfair termination. They prayed for a declaration that the termination was wrongful, unlawful, and unfair; for 1st and 2nd claimants each Kshs. 635, 227.00 and the 3rd claimant Kshs.1, 001, 000.00; and costs of the suits.

Despite service the respondent did not enter appearance and did not attend the hearing.

The 1st and 2nd claimant were employed by the respondent as mechanics. The 3rd claimant was employed by the respondent as a driver.

The claimants' case is that they concluded a memorandum of agreement with the respondent on 30.07.2015. Under the agreement overtime was to be paid and the workers were to be paid as per the Labour Institutions (Building and Construction Industry) (Wages) Order, published in 2013. It is the claimants' further case that upon signing that agreement the respondent informally agreed to pay the 1st and 2nd claimants a monthly salary of Kshs. 33, 090.00 being Kshs. 1, 103.00 per day. On the other hand, the respondent informally agreed to pay the 3rd claimant Kshs. 45, 500.00 per month being Kshs. 1, 516.67 per day.

The claimants demanded the agreed pay and the claimants' case is that instead of paying up, the

respondent intimidated and harassed them and subsequently terminated each of the claimant's employment unfairly. CW1 testified that the claimants were fired on 30.10.2015 when the respondent's manager known as Kenya told the claimants to leave job as the said Kenya was going to bring in his own persons to replace the claimants. The claimants claimed and prayed as per their respective statements of claims.

The court has considered the evidence, the pleadings and the submissions. As the respondent did not file a defence, the respondent is deemed to have admitted the claimants' cases. The court returns that taking into account the material on record the claimants have established their respective cases on a balance of probabilities. The claimants will therefore be awarded as prayed for in the statements of claims. In awarding each claimant 12 months' compensation for unfair termination, the court has considered that the claimants wished to continue in employment, they were terminated in view of their valid grievance about the underpayment, each did not contribute to the termination and the respondent did not file a defence or offer any reason to challenge the prayer. The court returns that the respondent failed to establish a valid reason for the termination as envisaged in section 43 of the Employment Act, 2007 so that the termination of the contract of service for each of the claimants by the respondent was unfair.

In conclusion judgment is hereby entered for the claimants against the respondent for:

- a. The declaration that the respondent's termination of each of the claimant's contract of employment was unfair.
- b. The respondent to pay the 1st claimant **Kshs.635, 227.00**; the 2nd claimant **Kshs. 635, 227.00**; and the 3rd claimant **Kshs.1, 001, 000.00** by 01.12.2016 failing interest to be payable thereon at court rates from the date of this judgment till full payment.
- c. The respondent to pay each claimant's costs of the suit.

Signed, dated and delivered in court at Nyeri this **Friday, 7th October, 2016.**

BYRAM ONGAYA

JUDGE