



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

AT NYERI

CAUSE NO. 15 OF 2014

DANIEL GITAU KARUGA.....CLAIMANT

VERSUS

ELITE EARTH MOVERS LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 4th November, 2016)

JUDGMENT

The claimant filed the memorandum of claim on 20.01.2014 through C.M King'ori Advocates. The claimant prayed for judgment against the respondent for:

- a. Kshs 265, 200.00 being 1 month pay in lieu of termination notice Kshs.20, 400.00; and 12 months' pay for compensation for unfair termination Kshs. 244, 800.00.
- b. Costs and interest.

The respondent filed the response to the claim on 07.09.2016 through Amolo & Gacoka Advocates. The respondent prayed that the suit be dismissed with costs.

The parties consented that the suit be determined on the basis of the pleadings and documents on record.

It is not in dispute that on 15.11.2008 the claimant was employed by the respondent as a driver at an initial gross salary of Kshs. 14, 464.00 per month and increased to Kshs. 20, 200.00 per month. It is further not disputed that the claimant served the respondent diligently throughout the period of employment and the claimant was willing to continue in employment.

The claimant's case is that on or about 14.03.2013 the respondent, without any explanation or due notice failed to allocate duties to the claimant or failed to admit the claimant to work and stopped the payment of the claimant's salaries. The claimant's further case is that the respondent's actions amounted to unlawful and wrongful termination of the employment and the claimant prays for reliefs as per the memorandum of claim.

The respondent's case is that the claimant's services were required for only one project and upon completion of that project the contract of service lapsed accordingly.

The **1st issue** for determination is whether the termination was unfair. The letter of appointment states that

the claimant was employed by the respondent on Othaya-Konyu-Nyeri Roads Project. The letter does not state that upon completion of the project, the claimant's employment would thereby get terminated. Even if such term of service were to be implied, there is no evidence that the project ended. The court finds that the contract of service was not such that it would terminate upon the end of the project and there was no evidence that the project ended. The end of the project being the reason for the termination of the claimant's employment as urged for the respondent, the court returns that the reason was invalid and the termination was unlawful and unfair for want of a valid reason of termination as envisaged in section 43 of the Employment Act, 2007.

The **2nd issue** for determination is whether the claimant is entitled to the remedies as prayed for. Clause 4 of the letter of appointment provided for one month termination notice or pay in lieu of such notice. The court returns that the claimant is entitled to one month pay in lieu of the termination notice. The claimant had served for over 4 years. He was willing to continue in employment and had a clean record of service. The sudden termination of his employment was without notice and the claimant did not contribute to the termination. The respondent has not given mitigating factors and the court returns that the claimant is entitled to the 12 months' salaries in compensation under section 49(1) (c) of the Employment Act, 2007.

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

- a. The respondent to pay the claimant **Kshs. 265, 200.00** by 15.12.2016 failing interest to be payable thereon at court rates from the date of this judgment till full payment.
- b. The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 4th November, 2016.**

BYRAM ONGAYA

JUDGE