



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

CAUSE NO. 425 OF 2016

FREDRICK JUMA OGEDACLAIMANT

VERSUS

PRIME STEEL MILLS LIMITED..RESPONDENT

JUDGEMENT

1. The claim was filed on 17th March 2016 and summons served upon the respondent on 31st March 2016 and Affidavit of Service filed in this regard on 4th May 2016 confirming service. There was no appearance or defence filed by the respondent. The court gave directions on the hearing and heard the claimant's case in the absence of the respondent.

2. The Claimant was employed by the respondent as a togsman/machine operator from January 2007 until 11th January 2016 when he reported to work but was stopped at the gate on the grounds that there was no more work for him. The claimant was paid a daily wage of Kshs 542 as his last wage. The claimant visited the respondent the next days to ask why he had been unprocedurally been terminated but no reasons were given to him. That attempts to have the respondent pay his terminal dues went unanswered.

3. The claimant is seeking;

- a. notice pay;
- b. Payment in lieu of leave days not taken;
- c. Overtime hours worked;
- d. Payment for work during public holidays; and
- e. Compensation for unfair termination

4. The claimant also testified in support of his case. He testified that in January 2016 he was on night shift. On 11th January he proceeded for his shift and when trying to log in for his shift he was stopped by security who had a list of 5 employees who they said were not to be allowed inside the respondent premises. There was no reason given as to why the 5 employees were singled out for termination of employment. The next day the claimant together with his colleagues went to make enquiries as to what was going on. They met the accountant who said the Human Resource Officer had issued the list of 5. They called the Human Resource Officer who directed the claimant and his colleagues to comply with the directions given at the gate as management had decided to terminate their employment.

5. That the claimant and his 5 colleagues went to the Labour Office to seek help but none was forthcoming and opted to file suit.

6. The claimant also filed his submissions.

Determination

7. On the evidence of the claimant that he was in the employment of the respondent since 2007 to 2016, and without any defence to challenge the claim, I take it this evidence is correct. Pursuant to the provisions of Section 37 of the Employment Act, where the claimant remained on a daily wage of Kshs 542.00, with such continued employment, he became a full time employee of the respondent. The failure by the respondent to enter appearance and file defence denied this court the work records and thus by the application of Section 37, all rights due in employment shall be assessed with regard to the applicable law.

8. Section 43 of the Employment Act requires an employer to give reasons for the termination of employment. Where such reasons do not exist, Section 45 provides that such termination is unfair and compensation is due.

9. Section 35 of the Employment Act requires that before termination of employment, an employee should be given notice or payment in lieu thereof. Where no notice exists, such pay is due. The claimant earned Kshs 542.00 per day amounting to Kshs. 16,260.00.

10. Unpaid leave is due where there are no work records that the claimant took such leave. Such is awarded as claimed at Kshs 102,438.00.

11. On the claim for overtime, the claimant is seeking a total sum of Kshs 1,756,080.00. The claimant however fails to demonstrate how this amount arose. The claimant testified that he was on the night shift when he terminated. I take it that each shift had its own hours unless the claimant was called and or required to work overtime. In his submissions, the claimant sets out that he worked 4 hours overtime for the entire period of employment. However this did not come out as the case in his evidence in court. This claim though not challenged by the respondent is declined. Each award of the court must have a basis.

12. Work during public holidays is claimed. Work overtime and work on public holidays are two different rights at work. Such should be separated and addressed in their context. One relates to work beyond the allocated hours of work each day while work during public holidays relates to work during gazette public holidays and therefore cannot form a general claim similar to overtime work. The claimant opted to address the two issues together without building clarity as to the nature of each. Such cannot be awarded a general award.

13. Compensation is due in a case of unfair termination that is not based on any reasons or without due process. The claimant is awarded 12 months' pay all being 195,120.00

Judgment entered for the claimant against the respondent in the following terms;

a. Compensation awarded at Kshs. 195,120.00;

b. Notice pay Kshs 16,260.00;

c. Leave pay Kshs. 102,438.00;

d. Costs of the suit

Delivered in open court at Nairobi this 3rd November 2016.

M. MBARU JUDGE

In the presence of

.....

.....

.....