

REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 299 OF 2014

PAUL AMUKOBOLE.....CLAIMANT

VERSUS

POLYPIPES LIMITED (STEEL DIVISION).....RESPONDENT

JUDGMENT

1. The Claimant filed his suit on 28th February 2014 seeking resolution of the dispute he framed as wrongful and unlawful termination of the Claimant's services and failure by the Respondent to pay terminal benefits to the Claimant. It was his averment that the Respondent employed him in February 1991 on a daily wage of Kshs. 354 later increased to Kshs. 457 a day translating to a monthly income of Kshs. 9,204. He averred that he worked with diligence and loyalty until 17th January 2013 when the Respondent unlawfully terminated his services without paying him his dues or notice. He sought notice pay of Kshs. 9,204/-, leave accrued for 21 years Kshs. 141,741.60, service pay of Kshs. 101,244/- making a total of Kshs. 252,189.60. He also sought compensation to the maximum of 12 months as well as costs of the suit and interest.
2. The Respondent entered appearance through the firm of Okong'o, Wandago & Co. Advocates and did not file a defence.
3. The Claimant testified on 26th January 2015 and stated that he was employed by the Respondent in February 1991 and worked until 17th January 2013 when he was told there was no work. He testified that he used to work as a casual. He stated that he worked in one shift and there were two shifts each day. He testified that he worked from 8.00am to 8.00pm from Monday to Saturday and that he worked during the day. He testified that he did not receive any pay on termination.
4. He did not call any witnesses though in his Memorandum of Claim he had listed Kennedy Sikinyi Namai, Kennedy Kibiega and Livingstone Oundo as his witnesses.
5. The Claimant did not attach any documents to prove his claim and all the Court has to rely on is his pleadings and testimony. He stated that he worked as a casual from 1991 till termination on 17th January 2013. Under the Employment Act 2007, the contracts of service of casuals automatically morph into monthly contracts under Section 37(1)(a). In this case the Claimant was on a monthly contract earning Kshs. 9,204/-.
6. His services were terminated on 17th January 2013 meaning he did not get any notice. He would be entitled to notice. He also would be entitled to severance pay as there is no indication of payment of NSSF dues. He is thus entitled to receive payment of 15 days service for each year worked and he thus would be entitled to Kshs. 101,244/- under this head. He was terminated without just cause and I would award him compensation for 3 months being Kshs. 27,612/-. He will also have costs of the suit.
7. In the final analysis I enter judgment for the Claimant for Kshs. 138,060/-, costs and interest on the sum from date of judgment till payment in full.

Orders accordingly.

Dated and delivered at Nairobi this 9th day of February 2015

Nzioki wa Makau

JUDGE