



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO.135 OF 2013

FREDRICK KANYANGO MBATIA.....CLAIMANT

-VERSUS-

INTEX CONSTRUCTION LIMITED..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 6th March, 2015)

JUDGMENT

The claimant Fredrick Kanyango Mbatia filed the statement of claim on 16.12.2013 through Waweru Macharia & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. Kshs.2, 166,100.80 being unpaid dues.
- b. Kshs.1, 440,000.00 being 12 months compensation for unfair or unlawful dismissal.
- c. Overdeducted payee of Kshs.36, 000.00.
- d. Costs of the suit.

The respondent filed the statement of response on 14.02.2014 through Ameyo Guto, Etole & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs.

Despite service, the respondent and the respondent's Advocate did not attend court at the hearing.

The claimant testified to support his case. He was employed by the respondent as a workshop manager from 3.01.2011 to 23.8.2013 when he was summarily dismissed from employment. It was the claimant's evidence that at termination he earned Kshs.120, 000.00 per month. The termination was on the grounds of insulting the project manager at the camp site on 12.08.2013 and keeping the office computer at home without the knowledge of the claimant's supervisor. It was the claimant's case that at the disciplinary hearing the project manager in issue never attended and the reasons for the termination were not established. It was submitted for the claimant that paragraph 5 of the statement of response invoked reasons for termination which had not been brought to the claimant's attention until the filing of the response. Such extraneous reasons included the allegation that the claimant had reported on duty while he was drunk.

The court has considered the evidence on record and finds that in absence of the respondent's evidence to establish the reasons for the termination, the claimant has on a balance of probability showed that the termination was unfair. The court finds that the termination was unfair under section 43 of the Employment Act, 2007 because the respondent failed to show that the reasons for the termination existed at the time of the termination.

The court further finds that the claimant has established that he is entitled under the headings of 3 months

pay in lieu of notice Kshs. 432,000.00; overtime for 31 months 1,436,930.00; 5 days annual leave Kshs.27,692.30; unpaid house allowance Kshs.48,000.00; service pay Kshs.221,538.50 and over deducted tax of Kshs.36,000.00 and 12 months compensation of Kshs.1,440,000.00 making a sum of Kshs. 3,642,100.00 as submitted for the claimant.

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

- a. The respondent to pay the claimant a sum of **Kshs.3,642,100.00** by 1.05.2014 in default interest at court rates to be payable there on from the date of this judgment till full payment.
- b. The respondent to pay the costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 6th March, 2015.**

BYRAM ONGAYA

JUDGE