



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**CAUSE NO. 984 OF 2013**

**LUKE OKOBA BUSILY ..... CLAIMANT**

**VERSUS**

**MR. VIPIN PATEL**

**T/A MANSHI ENTERPRISES..... RESPONDENT**

**Claimant in Person**

**JUDGEMENT**

1. The suit was brought vide a memorandum of claim dated 27<sup>th</sup> June, 2013 seeking payment of terminal benefits and twelve month's compensation for alleged unlawful and unfair termination of employment by the Respondent. The Claimant was employed as an ungraded artisan.
2. He worked continuously until 11<sup>th</sup> April, 2013 when his employment was terminated without notice and for no valid reason.
3. The claimant was paid Kshs 365 per day but the payment made every 15<sup>th</sup> and 30<sup>th</sup> day of the month.
4. The Claimant signed salary voucher upon payment.
5. The Claimant worked from Monday to Sunday depending on the workload from 8 a.m. till 5 p.m. some time they worked overnight and were paid overtime at Kshs 37 per hour.
6. The Claimant and his colleagues were not granted leave. The company closed on 24<sup>th</sup> December of every year and the employees returned on 2<sup>nd</sup> January of the following year.
7. Overtime was paid for working during public holidays but at a less rate.
8. The termination followed closure of office in December, 2012. When the Claimant returned in January 2013, He was told to go home and await to be called. The Claimant was then called to collect his terminal dues. No reason was given for the termination.
9. The Claimant claims:
  - (i) 1 month's salary in lieu of notice in the sum of Kshs 16,707 The claim is in terms of minimum wage applicable at the time of termination. The claimant was paid 365 x 30

days = 10,950. He states that he should have been paid Kshs 556 per day and not 365.

(ii) He claims 5 ¼ days leave at 556.90 which amounts to Kshs 5,847.45.

(iii) Severance pay at 15 days salary for each completed year of service in the sum of Kshs 875,181.50. The Claimant was not registered with NSSF hence this claim is valid. Claim for additional service pay is rejected.

(iv) Under payment from 2004 upto 2013 in terms of the regulation of wages (Agricultural Industry) Gazette Notice provided as Appendix LOB I to the memorandum of Claim and set out in the oral testimony by the Claimant in Court in the sum of Kshs 401,307.80.

10. The claim for overtime was not supported by any tangible evidence.

### **Compensation**

11. The Claimant was dismissed from employment without notice and no reason assigned contrary to the provisions of The Employment Act, 2007.

12. The Respondent was served with summons on 3<sup>rd</sup> July 2013 and an Affidavit of Service was filed on 5.2.2014 by Mr Jackson Agire Yahana a process server. The Respondent did not enter appearance nor file a statement of Response to the Claim.

13. The court is satisfied that the enumerated terminal benefits due and owing to the Claimant have been proved on a balance of probability.

14. The court is also satisfied that the Employment of the Claimant was terminated for no valid reason and in terms of unfair procedure.

15. The court awards the Claimant six (6) months' salary as compensation for the unlawful and unfair dismissal in the sum of Kshs 100,242 calculated at the current monthly salary of Kshs 16,707 per month.

16. Total award (Terminal benefits plus compensation) is Kshs 601,000. Amount is payable with interest at court rates from date of the judgement till payment in full.

17. The Claimant is to be provided with a certificate of service within 14 days from the date of this judgement.

18. The Respondent is to pay the costs of the suit.

**Dated and Delivered at Nairobi this 22<sup>nd</sup> day of May 2015**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**