



REPUBLIC OF KENYA
 IN THE INDUSTRIAL COURT AT MOMBASA
 CAUSE NUMBER 449 OF 2014

BETWEEN

ALI MWANZIA KELLY a.k.a. ROBINSON

MWANZIA KELLY CLAIMANT

VERSUS

MOHAMED SWALEH.....
 RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Mr. Mutisya instructed by Musinga & Company Advocates for the Claimant

No appearance for the Respondent

ISSUES IN DISPUTE:

- UNFAIR AND UNLAWFUL TERMINATION
- WORK INJURY

AWARD

[Rule 27 [1] [a] of the Industrial Court [Procedure] Rules 2010]

1. The Claimant filed his Statement of Claim on 16th September 2014. He claims he was employed by the Respondent as a Truck Driver in June 2007, and worked up to November 2008. He was involved in a traffic accident near Kibwezi, along Mombasa-Nairobi highway, on or around the 11th November 2008. The Respondent terminated the Claimant’s contract after the accident. The Claimant earned a monthly salary of Kshs. 20,000. He states the Respondent refused to pay the costs of the Claimant’s hospitalization after the accident. He was not registered as a Member of the National Social Security Fund, and the National Hospital Insurance Fund. He prays the Court grants him the following Orders against the Respondent:-

- a) Service pay at Kshs. 20,000.
- b) Salary for 11 days worked in November 2008 at Kshs. 7,333.

c) Annual leave pay of 1 year at Kshs. 20,000.

d) 1 month salary in lieu of notice at Kshs. 20,000.

e) 12 months' salary in compensation for unfair termination at Kshs. 240,000.

f) Medical expenses at Kshs. 694,062.85

Total..... Kshs. 1,001,396.10

g) Certificate of service.

h) Costs and any other suitable relief.

2. Although there are filed affidavits of Process- Servers indicating the Respondent was served with the Summons, the Statement of Claim and the Hearing Notice, he did not file anything in response, or attend Court at any given time. The Claimant was heard on 12th March 2015. The matter was last mentioned on 11th May 2015, when the Claimant confirmed the filing of his Closing Submissions.

3. He told the Court he was employed as a Long Distance Truck Driver. He operated between Mombasa and Eldoret. He was involved in an accident on 11th November 2011. After this the Respondent terminated his contract. He was not paid any terminal benefits. He was not notified before termination, and was not given the reason for the decision.

4. In his Submissions filed on 17th April 2015, the Claimant argues he merits notice pay and service pay by virtue of Sections 35 [1] [c], 35 [5] and 36 of the Employment Act 2007. Termination violated Section 41 and 45 of the same law. It was for the Respondent to ensure the Claimant received medical attention under Section 34 of the Employment Act. The Claimant prays the Court to allow the Claim.

The Court Finds and Awards:-

5. Unfortunately the Claimant seems to have come to Court outside the 3 year period given under Section 90 of the Employment Act 2007. He seeks various remedies, all argued to fall under the Employment Act 2007.

6. He has not explained the delay in coming to Court. He left employment in November 2008 after his accident, and only filed this Claim on 16th September 2014, almost 6 years later. He cites the Work Injury Benefits Act 2007 and the Labour Institutions Act 2007. He does not demonstrate how these laws apply to his case, and whether they have any validating influence on the Claim filed late under the Employment Act 2007. The Court is not able to assist the Claimant.

IT IS ORDERED:-

[a] The Claim is time-barred and is hereby dismissed with no order on the costs.

Dated and delivered at Mombasa this 19th day of June 2015

James Rika

Judge