



REPUBLIC OF KENYA  
 IN THE INDUSTRIAL COURT AT MOMBASA  
 CAUSE NUMBER 468 OF 2014

**BETWEEN**

CHARLES ODONGO GUMBA .....CLAIMANT

**VERSUS**

HABO GROUP OF COMPANIES LIMITED ..... RESPONDENT

*Rika J*

*Court Assistant: Benjamin Kombe*

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*Mr. Anaya Advocate instructed by Matete Mwelese & Company Advocates for the Claimant*

*No appearance for the Respondent*

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ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

AWARD

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

1. The Claimant filed his Statement of Claim on the 6<sup>th</sup> October 2014. He states he was employed by the Respondent Company as a Turn Boy, on 18<sup>th</sup> May 2012, earning a monthly salary of Kshs. 10,000. His contract of employment was terminated by the Respondent on the 16<sup>th</sup> April 2014, without notice or reason. He prays the Court to grant him, against the Respondent, the following orders:-

- a. 2 months' salary in lieu of notice at Kshs. 20,000.
- b. Salary for March 2014 at Kshs. 10,000.
- c. Accrued [annual leave?] for 2 years at Kshs. 20,000.
- d. 12 months' salary in compensation for unfair termination at Kshs. 120,000

Total..... Kshs. 170,000

e] Investigation and calculation of underpayment of wages by the Respondent.

d] Costs.

2. The Respondent though served with the Court Summons, Notices of Hearing, Mention, and all the relevant Pleadings, did not attend Court on any occasion, or file any response to the Claim. Mr. Gumba gave evidence and wound up his case on the 26<sup>th</sup> July 2015.

3. He testified he joined the Respondent in 2010, initially earning a monthly salary of Kshs. 6,500. He was formally employed through a letter of appointment dated 18<sup>th</sup> May 2012, and his salary adjusted to Kshs. 10,000, on 23<sup>rd</sup> May 2012. His contract was terminated in April 2014. He was not given a specific reason by the Respondent for the decision; he was simply told, “ *Kazi hakuna*,” [Kiswahili for “ no work.”].

4. He had been involved in an accident on 18<sup>th</sup> July 2013, in the course of his work, while on a journey from Kampala in Uganda back to Mombasa. He was treated at Makindu and later at Makadara [Mombasa Hospital], being discharged on 8<sup>th</sup> August 2013. He continued with treatment. He was still on medication as of 14<sup>th</sup> April 2014 when the termination decision was made. He was not paid any dues. Termination was very painful. It was unfair. The Claimant adopts his Pleadings, Documents and Submissions in urging the Court to allow the Claim.

*The Court Finds:-*

5. The Pleadings, Evidence, Documents and Submissions given by the Claimant are without challenge from the Respondent. It is fair to conclude the Claimant was employed by the Respondent Company initially in the year 2010, on a salary of Kshs. 6,500 per month. He was employed formally through a letter of appointment dated 18<sup>th</sup> May 2012, and his salary adjusted to Kshs. 10,000 per month. He was involved in a road traffic accident along the Mombasa- Kampala Highway in the course of his work, on the 18<sup>th</sup> July 2013. He was injured, hospitalized and treated for the period leading to the termination of his contract of employment, on the 14<sup>th</sup> April 2014.

6. Section 41, 43 and 45 of the Employment Act 2007 require the Employer to prove reason or reasons for termination of the contract of employment, show validity of the reason or reasons, and demonstrate the process is fairly carried out. The Respondent, by keeping away from the proceedings, has failed to fulfill any of these obligations. The evidence by the Claimant that he was dismissed without notice or reason must stand. He appears to have been dismissed on the ground that he was injured while at work. His injury was deemed to diminish his productivity. He was a burden to the Respondent. This, in the absence of any evidence or material from the Respondent, would seem to the Court to be the thinking underlying the termination decision. ***The Court is satisfied the Claimant has established his case, and merits remedial action.*** He is allowed the prayer for compensation, notice pay, salary arrears, and annual leave pay. Annual leave is granted for 42 days [21 days each year] at the rate of Kshs. 384 per day. The Court does not have evidence of underpayment, and ground, to order an investigation of the alleged underpayment of wages.

IT IS ORDERED:-

- a. ***Termination of the Claimant’s contract of employment was unfair and unlawful.***
- b. ***He is, within 30 days of the delivery of this Award, to be paid by the Respondent 12 months’ salary in compensation at Kshs. 120,000; salary for March 2014 at Kshs. 10,000; accrued annual leave at Kshs. 16,153; and 1 month salary in lieu of notice at Kshs. 10,000- total Kshs. 156,153.***
- c. ***Costs to the Claimant***

Dated and delivered at Mombasa this 31<sup>st</sup> day of July 2015

James Rika

Judge