



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 809 OF 2014

(Before Hon. Justice Hellen S. Wasilwa on 20th August, 2015)

FRANCIS MWINA KIMATU.....CLAIMANT

VERSUS

GENERAL INDUSTRIES LIMITED.....RESPONDENT

JUDGMENT OF THE COURT

1. The Claimant herein Francis Mwina Kimatu filed his Memorandum of Claim on 15/5/2014 through the firm of Kiarie, Kabita, Kihunyu & Associates. It is the Claimant's case that he was employed by the Respondent as a casual worker in 2006 and was promoted to position of a general worker on 1st February, 2010.

2. The Claimant annexed his contract of employment as Appendix 1 which shows that he was employed as a general worker with effect from 1st February, 2012 to 31st January, 2013. The contract was renewable subject to work performance. His salary was 8,193/= basic, Kshs.1,229/= house allowance and 1,400/= leave travelling allowance. His August, 2013 payslip – Appendix 4 shows that his gross pay was 12,201.46/= and this is an indication that the contract was extended beyond January, 2013.

3. The Claimant avers that on 20/9/2013, he worked upto the end of the day and then the HR Manager informed him that his services were no longer required. Before this, the Claimant had been on some leave for 10 days and on resuming is when he was terminated. He was not given any letter of termination nor was he given any reasons for the same. He seeks to be paid as per his Memorandum of claim.

4. The Respondents were served with the Memorandum of claim on 27/5/2014. They didn't file any response nor any appearance. This case therefore proceeded ex parte.

5. The Claimant has adduced evidence to show he was an employee of the Respondent. The manner of termination is not explained. Without any evidence to the contrary, the Claimant has proved that he was terminated without any reasons and without due process as envisaged under Section 45 (1) and 2) which states as follows:

1. No employer shall terminate the employment of an employee unfairly.

2. A termination of employment by an employer is unfair if the employer fails to prove:

- a. *that the reason for the termination is valid;*
- b. *that the reason for the termination is a fair reason:-*
 - i. *related to the employee's conduct, capacity or compatibility; or*
 - ii. *based on the operational requirements of the employer; and*
- c. *that the employment was terminated in accordance with fair procedure.*

6. I therefore find the termination was unfair and unjustified and I find for Claimant and order as follows:

1. *That the Claimant be paid 12 months salary as compensation for unlawful termination =*

$$12 \times 12,147 = 145,764/=$$

2. *1 month salary in lieu of notice = 12,147/=*

$$TOTAL = 157,911/=$$

3. *Claim for severance pay is not payable as the claimant was not declared redundant.*

4. *The Claimant be issued with a Certificate of Service.*

5. *The Respondent will also meet costs of this suit.*

Read in open Court this 20th day of August, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Respondent

Kihunju holding brief for Kabita for Claimant