



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 2329 OF 2012

WILLIAM EGESBULI OTIENO.....CLAIMANT

VERSUS

STEEL MAKERS LIMITED..... RESPONDENT

JUDGMENT

1. The claimant in this suit avers that he was employed by the respondent in July, 2008 as a casual labourer at monthly salary of Kshs.13,260/=. He worked for the respondent until 20th July, 2012 when he claims the respondent unlawfully terminated his services. He therefore claims a sum of Kshs.231,608 which he itemized as two months' salary in lieu of notice, payment for 104 days from July, 2008 to July, 2012 and twelve months' salary as general damages for unlawful termination of services.
2. The respondent in opposing the suit averred that the claimant was a casual worker earning a daily wage of Kshs.326. The respondent further denied that the claimant's services were terminated as alleged and he was daily worker who failed to present himself for work the following day and just left.
3. In his testimony in Court, the claimant stated that he joined the respondents employment in 2008 and was earning Kshs.836 per day and that he left in July, 2012. He further stated that he got injured at work and when his advocate demanded compensation he was terminated.
4. In cross-examination he stated that he was paid on daily basis and that he never went on leave.
5. The defendant called one witness a Ms. Bilia Kemunto who stated she was the respondent's Human Resource Officer. She had been working for the respondent since 2007. It was her evidence that the claimant was a casual worker and that he was on daily wage earning Kshs.336 per day. The claimant was never issued with a written contract and that as a casual worker he was never entitled to annual leave. She confirmed that the claimant got injured while at work and that the respondent met his medical expenses. He was further compensated by the respondent's insurance for his injuries. According to her the claimant just left work.
6. There is really no dispute between the claimant and the respondent that the claimant was employed by the latter as a casual worker. There is further no dispute that sometime in July 2012, the claimant stopped working for the respondent. According to the claimant he was terminated while according to the respondent, the claimant just stopped coming to work.
7. Casual employment by its very nature is terminable at the end of each day without notice to this extent and as conceded by the claimant, there was no obligation on the respondent to give notice of

termination to the claimant. There being no requirement to give notice of termination, it naturally flows that an employer need not have a reason for ending the services of a casual employee. The issue of unlawfulness or otherwise of the termination as claimed by the claimant therefore does not arise.

8. Section 37 of the Employment Act however stipulates that where a casual employee is engaged for an aggregate period of not less than a month, the contract of service of the casual employee shall be deemed to be one where wages are paid monthly and section 35(1)(c) shall apply to that contract of service. Section 35(1) (c) provides that such a contract is terminable by either party at the end of the period next following the giving of notice in writing. Further, section 37(3) of the Act provides that an employee whose contract of service has been converted in accordance with subsection 1 and who works continuously thereafter for two months or more from the date of employment as a casual employee shall be entitled to such terms and conditions of service as he would have been entitled under the Act if not initially employed as a casual employee. The entitlements under this Act with regard to termination of services include giving of reason for termination of services, following fair procedure in executing the termination and where applicable, payment of terminal dues.

9. The respondent herein avers that the claimant just left work however no evidence was produced in Court to show some effort was made to call upon him to show cause why his services should not be terminated for absconding duty.

10. The claimant herein had an employment relationship with the respondent starting way back in 2007. It was the respondent's evidence that in 2012 the claimant got injured in the course of his duties and the respondent met his medical expenses as well as helped processing compensation for his injuries by the respondent's insurance. The claimant was therefore no longer just a casual worker. He became a regular employee by operation of law to wit section 37 (1) of the Employment Act. His separation with the respondent was thus governed by section 35(1) (c) as well as section 37(3) of the Employment Act. There was no evidence that the respondent complied with these provisions of the Act. The Court therefore awards the claimant as follows:-

(a) One month's salary in lieu of notice of

termination of employment10,080.00

(b) 7 months salary for unfair termination

of services.....70,560.00

80,640.00

(c) Costs of the suit.

11. It is so ordered.

Dated at Nairobi this 2nd day of October 2015

Abuodha J. N.

Judge

Delivered this 2nd day of October 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge