



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**CAUSE NO. 471 OF 2014**

**JARED ODHIAMBO OJAO**

**CLAIMANT**

**v**

**POLY PIPES LIMITED**

**RESPONDENT**

**JUDGMENT**

1. Jared Odhiambo Ojao (Claimant) sued Poly Pipes Ltd (Respondent) on 2 October 2014 alleging unlawful termination of employment.
2. The Cause was mentioned on 19 November 2014 but because there was no evidence of service, the Court directed the Cause to be mentioned on 26 November 2014 to confirm service.
3. According to an affidavit of service sworn by Vincent O. Ogutu on 22 October 2014, and filed in Court on 24 November 2014, he served the Respondent's Director Mukesh Patel with the pleadings and mention notice on 22 November 2014. The said Mukesh Patel accepted service but declined to acknowledge service by signing or stamping on copies thereof.
4. Another affidavit sworn by Alfred Chepkwony Advocate and filed also on 24 November 2014 deposed that he went to the Respondent's offices on 20 November 2014 and he met a director, Mukesh Patel and served him with a mention notice for 26 November 2014 but he accepted a copy but declined to sign a counterpart thereof.
5. When the Cause was mentioned as scheduled, the Respondent had not filed any documents nor was it represented. The Court fixed the hearing for 15 July 2015.
6. On the date fixed for hearing, the Respondent was not represented again, and the Cause proceeded as an undefended Cause. The Claimant gave sworn testimony.
7. The Claimant stated that he was employed by the Respondent in August 2003 as a security guard and that on 1 July 2014 he reported to work as usual but the employer told him that his services were no longer required. He was not given a dismissal letter. He also stated he was not paid any dues though the monthly remuneration was Kshs 12,622/- at time of dismissal (pay slip for June 2014 was produced).
8. On why the dismissal was unlawful, the Claimant said that it was verbal and he was not given notice and further that he was not guilty of any offence.
9. After the dismissal, he reported to his Union, Kenya Union of Commercial Food & Allied Workers and the Union wrote to the Respondent on 17 July 2014 (copy produced). But the Respondent failed to attend a meeting sought by the Union in the letter.
10. Consequently, the Claimant stated that he sought legal advice and a demand letter was written to the Respondent on 3 September 2014 (copy produced) and thereafter the Cause was filed in Court.
11. On the terms of engagement, the Claimant stated that he was being underpaid and that he worked overtime for 2 hours daily without pay. He also stated that he did not go on leave during the tenure of the employment of 12 years.
12. The Claimant stated he was seeking compensation, service gratuity, costs and interest.
13. The Memorandum of Claim outlined the particulars of reliefs/entitlements sought by the

Claimant.

14. The pleadings and testimony by the Claimant remain unchallenged and uncontroverted.
15. The Respondent ignored/failed to file a Response. The legal effect is that the facts as set out by the Claimant and his testimony are uncontested. Therefore there is no dispute as to the facts.
16. Section 35(1)(c) of the Employment Act, 2007 obligate an employer to give at least 28 days written notice of termination of employment to employees paid by the month. The notice should be in writing. None was given.
17. The termination of the employment of the Claimant was consequently procedurally unfair.
18. Further, the Respondent by failing to attend the hearing/file a Response has failed to discharge the statutory burden imposed upon employers by sections 43 and 45 of the Employment Act, 2007.
19. The Court therefore finds the termination of employment substantively unfair.

### **Appropriate remedies**

20. The Claimant sought in the pleadings, 1 month pay in lieu of notice of Kshs 11,633/-; service gratuity of Kshs 55,638/-; overtime of Kshs 1,388,640/- and underpayments of Kshs 58,573/-. The Court finds for the Claimant on these heads of claim.
21. He also sought the maximum 12 months wages as compensation quantified as Kshs 188,448/-.
22. Considering the length of service, the Court finds the Claimant is entitled to maximum compensation.

### **Conclusion and Orders**

23. The Court finds and holds that the termination of the Claimant's employment was unfair and further that he is entitled to the dues outlined in the Memorandum of Claim as follows

a. 1 month wage in lieu of notice	Kshs 11,633/-
b. Service gratuity	Kshs 55,638/-
c. Overtime	Kshs 1,388,640/-
d. Underpayments	Kshs 58,573/-
e. Compensation	Kshs 188,448/-

TOTAL **Kshs 1,702,931/-**

24. Claimant to have costs.

**Delivered, dated and signed in Nakuru on this 27<sup>th</sup> day of November 2015.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant                      Mr. Bichanga instructed by Chepkwony & Co. Advocates

Court Assistant                  Nixon