



REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT  
AT MOMBASA  
CAUSE NUMBER 213 OF 2015

**BETWEEN**

KIIO MULTYA KISYULA..... CLAIMANT

**VERSUS**

VIPINGO BEACH RESORT.....RESPONDENT

*Rika J*

*Court Assistant: Benjamin Kombe*

*Ms. Onyango instructed by Katee Omollo & 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 17<sup>th</sup> April 2015. He states he was employed by the Respondent as a Casual Worker in the year 2010, earning a daily rate of Kshs. 250. He was later converted into a Security Guard on a daily rate of Kshs. 430. His contract was terminated on the 30<sup>th</sup> May 2014, on the ground that there was diminished work, requiring the Respondent to declare redundancy. He was paid Kshs. 12,000 for days worked and advised to leave. He feels termination was unfair and unlawful and seeks the following orders against the Respondent:-

- a) A declaration that termination was unfair.

- b) A declaration that the Claimant was entitled to 1 month leave after every year worked.
- c) Payment of: 1 month salary in lieu of notice at Kshs. 12,900; unpaid annual leave for 4 years at Kshs. 51,600; gratuity at Kshs. 19,350; and compensation for unfair termination the equivalent of 12 months' salary at Kshs. 154,800 – total Kshs. 238,650.
- d) Any other suitable relief.
- e) Costs and interest.

2. The Respondent did not file any Response to the Claim, or attend Court on any session. There are Affidavits of Service filed, indicating the Respondent was made aware of the proceedings. The Claimant gave evidence on 2<sup>nd</sup> September 2015 when the hearing closed.

3. He told the Court he was initially employed as a Casual Worker, deployed in construction sites, and later converted into a Guard. He was informed by the Supervisor Mr. Nelson that there was no more work, on 30<sup>th</sup> May 2014. There was a list of Employees shown to him by Nelson, of those who would leave, and those who had been selected to stay on. The Claimant was told he would be recalled, but was never recalled. Others were recalled. He was reliable and hardworking and had been honoured with a commendation letter. He prayed the Court to allow his Claim.

*The Court Finds:-*

4. The Claimant's Pleadings, Evidence and Submissions are without challenge. The Court has no reason to disbelieve that the Claimant was initially employed by the Respondent as a Casual Worker, deployed in construction sites, and later converted into a Guard, earning Kshs. 430 per day. He worked from 2010 to 2014. Termination was at the instance of the Employer, and was explained on the basis of diminished volume of work. In legal terms, termination was on the ground of redundancy calling into play the law of redundancy prescribed under Section 40 of the Employment Act 2007.

5. There is nothing on record to show the Respondent adhered to the procedural and the substantive provisions contained in this law. There are no notices exhibited by the Respondent; there is no evidence of consultation; nothing shows the selection criteria; and there is no evidence of redundancy dues paid to the Claimant as demanded by the law. In sum termination has been shown to have been unfair and unlawful. The Claimant merits terminal benefits and compensation.

**6. IT IS ORDERED:**

***[a] The Claimant is allowed 1 month salary in lieu of notice at Kshs. 12,900; unpaid annual leave of 63 days [3 years] at Kshs. 27,090; severance pay at 15 days' salary for 4 years completed in service at Kshs. 25,800; and compensation for unfair termination at 12 months' salary at Kshs. 154,800- total Kshs. 220,590, payable within 30 days of the delivery of this Award.***

***[b] It is declared termination was unfair and unlawful. Other declaratory orders sought add no value to the Award and are rejected.***

***[c] Costs and interest granted to the Claimant***

Dated and delivered at Mombasa this 9<sup>th</sup> day of December 2015

James Rika

Judge