



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NYERI
INDUSTRIAL CAUSE NO. 107 OF 2013 (CONSOLIDATED)
BONIFACE NYAGA NJIRU.....CLAIMANT
VERSUS
BOARD OF TRUSTEE GICHUGU WATER &
SANITATION TRUST.....RESPONDENT

JUDGMENT

1. This cause has been consolidated with cause number 108 of 2013.
2. The claimants in both causes aver that they were employees of the respondent employed as plumbers. The claimant in cause number 107 was employed in January, 2005, while the claimant in cause number 108 was employed in March, 2007. Their services were allegedly terminated in September, 2012 when the respondent failed to allocate them duties as well as pay their salaries and other allowances.
3. The claimants therefore sought the intervention of the court to declare their status. That is to say whether they should still continue to regard themselves as employees of the respondent or they should consider themselves dismissed and therefore seek compensation for wrongful and unfair dismissal as well as seek their terminal dues.
4. At the trial of the action, the claimants' evidence was brief and simply reiterated that they were employed by the respondent as plumbers and deemed themselves terminated from employment when the respondent failed to allocate them work and instead brought other people to perform the same duties they were performing. Further it was their evidence that as from September, 2012 the respondent stopped paying them their salaries.
5. Employment relationships are contracts like any other hence are governed by principles of law of contract. The claimants in this case seem to allege that the respondent by its conduct repudiated the contract of employment between them and the respondent. In the context of employment relationship, the claimants are alleging that they were constructively dismissed by the respondent. Constructive dismissal is an unlawful termination of employment in circumstances where the employee leaves without express act or enunciation of 'dismissal' by the employer. It will be taken to be a dismissal if the employer has behaved towards the employee in a way that entitles the employee to treat himself or herself as wrongfully dismissed.
6. The claimants in this suit have averred that the respondent as from September, 2012 failed to allocate them work and pay them. Further it was their evidence at the trial that the respondent brought other persons to perform similar duties to what they were performing. These

circumstances no doubt constitute constructive dismissal. The claimants cannot therefore regard themselves as employees of the respondent where the latter's conduct clearly shows that it does not intend to continue the relationship. Constructive dismissal as observed earlier in this judgment is not only unlawful but unfair as well.

7. Section 45(1) of the employment Act prohibits employers from terminating employment contracts unfairly. Further under section 43(1) of the employment Act, in any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45 of the Act. The respondent though served neither entered appearance nor filed any response to this claim. Further they never appeared at the hearing or filed any submissions. In the circumstances the court deems the respondent to have failed to prove the reason or reasons for termination of the claimants contracts and proceeds to declare the terminations unlawful and unfair.

8. The court therefore proceeds to award the claimants as follows:

(A) Boniface Nyaga Njiru

(i) One month's salary in lieu of notice....	12,920
(ii) 8 months salary as compensation for unfair dismissal....	<u>103,360</u> =====

(B) (i) One month salary in lieu of notice....	8,688
(ii) 8 months salary as compensation for unfair dismissal....	

<u>69,504</u>	
78,192	=====

9. Both the claimants shall have interest on the decretal sum and costs of the suit.

10. It is so ordered.

Dated at Nyeri this 20th day of June, 2014.

ABUODHA N. J

JUDGE

Delivered in open Court in the presence of Mr. Kibe Mungai for Mr. Kimemia Advocate for the Claimant and in the absence of the Respondent.

ABUODHA N. J

JUDGE