



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 117/2013

(formerly Nairobi No. 1634/2011)

(Before Hon. Justice Hellen Wasilwa on 18th June, 2013)

PETER AYUKO AKOTHCLAIMANT

VERSUS

KENMAS CONTRACTORS &

SUPPLIES & ANOTHERRESPONDENTS

JUDGMENT

The claimant herein Peter Ayuko Akoth filed his memorandum of Claim against the respondents Kenmas Contractors and Supplies and Paul Awuonda on 13.9.2012. The issue in dispute concerns payment of his terminal dues.

The respondents were duly served with notice of summons and memorandum of claim and to-date they have never filed their reply. On 4.6.2013 the case proceeded for hearing in the respondents absence. The claimant's case is that he used to work for the respondents since 26.10.2010. The duty station was in Kimilili. His duty was steel fixing mechanic. He indicated to court that he worked well until 19.10.2011 and when he went to work, he was informed that there was no more work and he was asked to go home. He went and reported the matter to the labour officer. The labour officer summoned the respondents to their office with a view of discussing the matter.

On 18.11.2011, they had a discussion at the labour office which did not yield an agreement in terms of leave and notice payment. The claimant further reported the matter to his union and to the Provincial Administration. He was advised to go to court.

The claimant now seeks to be paid his terminal dues as follows:-

- | | |
|-------------------------------|-----------------|
| 1. Notice of one month | - Kshs 15,600/= |
| 2. Overtime (public holidays) | - Kshs 6,600/= |
| 3. Leave for 32 days | - Kshs 19,650/= |
| 4. House allowance | - Kshs 19,500/= |
| 5. Service pay of 18 days | - Kshs 10,800/= |
| 6. Tools allowance | - Kshs 1,520/= |
| 7. 3 months unpaid | - Kshs 46,800/= |

TOTAL = KSHS 120,470/=

He also seeks payment of damages for wrongful termination plus interest and any other relief this Honourable court may deem just and fit to grant.

Having heard the claimant's evidence the issue for determination is whether the claimant has any claim against the respondents.

I will first consider whether the claimant had any contractual relationship with the respondents. There is no employment contract letter exhibited by the claimant as proof that he was employed by the respondents. However a letter exhibited by the claimant herein written by the labour officer on 18.11.2011 is addressed to the respondents and it refers to their meeting held in the labour office's office. In the letter the labour officer recommends that the respondents pay claimant some moneys as his benefits. This is the only indication that the claimant had a relationship with the claimant.

That having been established, I find from evidence of claimant that he was just asked to go away and no explanation is given. He was not given any notice nor any hearing.

I therefore do find for claimant and order respondents to pay him as follows:-

1. **1 month's salary in lieu of notice** - **Kshs 15,600/=**
2. **Accrued leave – 21 days** - **Kshs 10,920/=**
3. **House allowance for 12 months**

= **15% of 15,600 X 12 - Kshs 28,080/=**

4. **Service pay - 15 days for 1 year** - **Kshs 7,300/=**
5. **3 months salary for unlawful**

termination - **Kshs 46,800/=**

TOTAL = KSH 108,700/=

The claimant should also be issued with a certificate of service. Respondents to pay costs of this case.

HELLEN WASILWA

JUDGE

18/06/2013

Appearances:-

Claimant present

respondents absent

CC. Sammy Wamache