



**REPUBLIC OF KENYA**  
**INDUSTRIAL COURT OF KENYA**

**CAUSE NO. 970 OF 2010**

***(Before D.K.N. Marete)***

**ALOSIE SITAKA ASUMAN.....CLAIMANT**

**VS**

**CHINA JIANGSU INTERNATIONAL.....RESPONDENT**

**JUDGEMENT**

This matter is in court through the claimants Amended Memorandum of Claim which is undated but filed in court on 9th September, 2011. The issue in dispute is cited as;

**Wrongful and unfair termination of the claimant's services and failure by the respondent to pay terminal benefits to the claimant.**

The respondent has not filed any pleading, defended the claim or appeared in court despite massive evidence of service of summons, pleadings and even hearing dates. This is peculiar and unusual.

The claimant's case is that on or about August, 2006, the respondent employed him as a labourer at a monthly salary of Kshs.7,000.00. This continued until January, 2010 when the respondent wrongfully and unlawfully terminated the claimant's services verbally and refused to pay him his terminal benefits. These are;

- |                          |                       |
|--------------------------|-----------------------|
| a. Pay in lieu of notice | Kshs.7,000.00         |
| b. Severances pay        | Kshs.17,500.00        |
| c. Accrued leave         | <u>Kshs.14,700.00</u> |

**Total amount**                    **Kshs.46,200.00**

- d. Compensation for wrongful dismissal to a maximum of 12 months wages plus costs and interest of this suit.

The claimant submits that the respondent was not compliant with the

Employment Act, 2007 and in particular section 40 (f) and (g) in that he did not issue notice or pay in lieu thereof, failed to pay terminal dues, leave days or house allowance.

He prays as follows;

1. The sum of Kshs.46,200.00 as particularized in paragraph 6 of the claim.
2. Compensation for wrongful dismissal to a maximum of 12 month's wages amounting to Kshs.84,000.
3. Cost of this suit
4. Interest in (i) and (ii) above
5. Any other relief as the Court may deem just.

This matter was not defended, or at all. There is massive evidence of service to the respondent as aforesaid but he has chosen to ignore and or neglect action on his part. His side of the stay is not known to the world and the court.

When this matter came for hearing on 5th July, 2013, the claimant duly sworn testified in support of his case. He reiterated the submissions on his claim and prayed that the court considers and rules as per the prayers of his claim. In all this the only evidence available on demand letter from Kitua cha Sheria for Kshs.32,000.00 drawn by John Etemesi, Advocate and legal officer. The other piece of evidence is a salary card which is not clear and bears the name Aloice, ID 10885320. The card does not indicate the name of the employer and is not in any way clear or authentic.

It would have been expected that the claimant would have clearly and sequentially tendered evidence of his employment, the nature of his duties, place(s) of work, timeliness of such work and service of termination and its nature. This was not done. The claimant merely raises allegations which are not supported by evidence and therefore remain unproven. It is and has been trite law that he who alleges must prove. This is more so in a situation like this where no defense is offered.

The respondent appears a contractor in the construction industry. Here, employees are often conscripted into piece rate nature of work where the job depends on the pendency of the contract and the time expected to clear it and move on to another. It is not permanent in nature and is always casual in nature, spirit and approach. The no disclosure of the claimants nature of work and duties therefore does not help in resolving this issue or unpuzzling the matter. There remains a dearth of untold story (ies).

The circumstances in this claimed litigation leave me with little choice in its determination. My hands are tied. I therefore have no choice but to dismiss the claim for want of proof. There is no order as to costs.

Dated, delivered and signed this 18th day of July, 2013.

**D.K. Njagi Marete**

**JUDGE**

**Appearances:**

1. Mr. Omwakwe instructed by M. Korongo & Company Advocate for the claimant.
2. No appearance for the respondent.