



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 1223 of 2011**

**LABAN MUDANYI..... CLAIMANT**

**VERSUS**

**K.S. CHADHA AND J.K. CHADHA..... RESPONDENTS**

(Before Hon. Justice Byram Ongaya on 29<sup>th</sup> October, 2012)

**JUDGMENT**

The Claimant is Laban Mudanyi. He filed the memorandum of claim on 26<sup>th</sup> July, 2011 against the Respondents K.S. Chadha and J.K. Chadha. The Claimant prayed for judgment be entered against the Respondents for

- (a) Principal sum of Ksh.309,960.00.
- (b) An order that the claimant be issued with certificate of service.
- (c) Costs of the suit.
- (d) Interest on a, b, c above; and
- (e) Any other relief the court may deem just to grant.

The principal sum of Ksh.309, 960.00 comprised of:

- (a) 3 months salary in lieu of notice - 41,250.00
- (b) Annual leave for prorated for 8 months - 7,406.00
- (c) 15% basic salary being house allowance  
for 8 months - 16,480.00
- (d) Weekends overtime worked for 7 a.m. – 9.p.m. - 16,480.00
- (e) Underpayment of the basic pay - 46,060.00
- (f) Saturday overtime 7a a.m. – 9 p.m. - 25,344.00

(g) 8 months compensation of salaries - 110,000.00

**Ksh.309,960.00**

The Respondents filed the memorandum of Defence on 14<sup>th</sup> November, 2011 through M/S Muriungi & Company Advocates and they pleaded as follows:

- (a) That the claimant was paid wages as per Legal Notice No. 98 of 2010, the Regulation of Wages (General) Amendment Order and therefore no claim should arise.
- (b) That the Respondents denied ever employing the claimant and if they did then he was paid all the dues.
- (c) That the claimant was not entitled to weekly resting days as provided for in Section 37 (2) of the Employment Act, 2007.
- (d) That the Claimant claims were denied and the Respondents prayed that the claimant's suit be dismissed with costs.

The cause came up for hearing on 29<sup>th</sup> October, 2012 when, the Respondents having been served, did not attend court. The claimant gave oral evidence to support his claims as follows:

- (a) That he was employed by the Respondents as a Cook. That was on 8<sup>th</sup> October, 2010 and the contract of employment was oral.
- (b) That he worked from 7.00 a.m. to 10.00 p.m. every day.
- (c) That the Respondent did not give him any rest day, off or holiday rest. The claimant stated he worked continuously everyday without any rest.
- (d) That in June 2011 he was sacked. He came to work as usual early in the morning and Mrs. Chadha asked him to leave her home. He requested for a notice and leave payment. Mr. Chadha then told him to go to the Ministry of Labour or the court for the dispute to be resolved.
- (e) That the Respondents were invited to Conciliation at the District Labour Office in Nairobi by the notice dated 20<sup>th</sup> June 2011 but the Respondents refused to respond. Thus, the claimant filed this cause.
- (f) The Respondents did not give the claimant any letter of employment. That since the claimant was sacked he was aware that the Respondents had employed numerous cooks and fired them in a manner similar to his. The claimant used to be paid Ksh.8,000/= per month and he prayed for compensation as claimed.

The court finds that in absence of the Respondent's evidence, the claimant had proved his claim on a balance of probabilities.

The claimant having been employed on 8<sup>th</sup> October, 2010 and fired in June, 2011, the court finds that his service is deemed to have been one where wages were paid monthly under Section 37 (1) of the Employment Act. Accordingly, the claimant was entitled to a twenty eight days notice of termination under Section 35 (1) (c) of the Act. The court further finds that the claimant's service was governed by the provisions of the Employment Act, 2007 as envisaged under Section 37 (4). Thus, the claimant was entitled to a notice and a hearing before termination as provided for in Section 41 of the Act. The Respondents were also required to prove the reason for the termination of the claimant as provided for in Section 43 of the Act but, in the present case, the court finds that the Respondent failed to do so. Accordingly, the court finds that the Respondents unfairly terminated the claimant's employment.

In conclusion, the court enters judgment in favour of the claimant and against the Respondent for:

- (a) a declaration that the Respondents unfairly terminated the employment of the claimant;
- (b) the respondent to pay the claimant Ksh.309,960.00 as prayed for in the memorandum of claim;
- (c) the respondent to pay costs of the cause;
- (d) the respondent to pay interest at court rates from the date of the judgment till full payment; and
- (e) the Respondent to issue and deliver to the claimant a certificate of service.

Delivered in court at Nairobi this 29<sup>th</sup> day of October, 2012.

**BYRAM ONGAYA**  
**JUDGE**