

REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 1331 of 2010

TIMOTHY MUTUNGA KATIKU.....CLAIMANT

VERSUS

JAMLECK MWANG.....RESPONDENT

JUDGMENT

This is the judgment in the case between Timothy Mutunga Kaiku, the Claimant and Jamleck Mwangi, the Respondent.

The claimant filed the memorandum of claim on 28th October, 2010 in person. The Respondent did not file the memorandum of Response.

The case came up for hearing on 12th January 2012, when the Respondent, despite service did not attend court. The claimant testified as follows:

- (a) That the Respondent employed the claimant as a Foreman in the Respondent's construction business known as Thenge-Ini General Contractors Limited. The claimant was entitled to monthly salary of Ksh.30,000/= at the rate of Ksh.1,000/= per day.
- (b) That as at February, 2010 the claimant had worked for ten months and twenty six days having been paid Kshs.122,000/= owed Ksh.188,000/= by the Respondent.
- (c) That since the claimant was not paid the wages by the Respondent, the claimant was forced to leave employment. He submitted that the contract of employment thereby came to an end.
- (d) The claimant produced exhibit C₁ being an agreement between the parties dated 18th March, 2010 by which the Respondent acknowledged to pay the claimant Ksh.188,000/= but the claimant testified that the same had not been paid.
- (e) The claimant also produced Exhibit C₂ being a demand letter dated 23rd June 2010 by the National Legal Aid and Awareness Programme and Exhibit C₃ being the plan for the houses the respondent had employed him and deployed as the Foreman.

The court has considered the evidence and the pleadings and find that the claimant has proved his case. The court further finds that the claimant's employment was unfairly constructively terminated. The claimant is awarded two months' gross salary being Ksh.60,000/=. Thus, judgment is entered for the claimant against the Respondent for:

- (a) A declaration that the constructive termination of the contract of employment was unfair;
- (b) The respondent to pay claimant Ksh.248,000/= plus interest at court rates till full payment; and
- (c) The respondent to pay the costs of the case.

Signed, dated and delivered at Nairobi this 16th day of November, 2012.

BYRAM ONGAYA
JUDGE