



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Cause 325 of 2009**

**CHRISTOPHER JUMA .....CLAIMANT/APPLICANT**

**VESUS**

**PREMIER FOOD INDUSTRIES LIMITED.....RESPONDENT**

**JUDGEMENT**

The claimant has filed a claim against the Respondent, his former employer. He claims:-

- (a) One month's salary in Lieu of Notice - Kshs. 17,352
- (b) Severance pay for 18 years as the rate  
18 days new year - Kshs.15,661,581
- (c) 13 days salary for October 2008 - Kshs. 8,617  
damages for wrongful dismissal
- (d) Unpaid leave of 3 months - Kshs. 52,056
- (e) Any other relief that the court may deem fit to grant.

The gist of the claim is that the termination was unlawful and based on untrue allegations.

The Respondent has opposed the claim and contented that the termination was lawful and because of gross misconduct on the part of the claimant. That he had neglected his duty of properly keeping of the factory Bin Cards and reconciling item. That the claimant was served with a Show Cause Letter for his failure to adhere to the company's procedures and exposing the Respondent to potential loss of products. That he Responded by letter and also attended a disciplinary hearing on 3-10-2009 where he was given an opportunity to air his defence. That after considering the defence tendered, the Respondent was not satisfied and consequently the services were terminated on 11-10-2008.

The parties did not call witnesses and agreed to rely on their pleading and file written submissions. I have carefully perused the pleadings files together with written submissions on record. The following issues for determination arise:-

- (a) Whether the termination of the claimants' contract of services was unlawful?

(b) What remedies are available to the claimant?

In answer to the first issue, I agree with the Respondent that the termination was lawful. Firstly, the claimant was given warning letter, later a show cause letter followed by a disciplinary hearing and then a termination letter quoting the reason for termination as neglect of duty which is gross misconduct under section 44(4)(c) of the employment Act 2007. I am satisfied that the Respondent complied with Section 41 of the Employment Act before terminating the contract.

As regards the remedies sought by the claimant, there is dispute on the claim for Notice Pay Salary, for the days worked in October 2008 and leave earned and not taken.

The claimant was paid the one month's salary in Lieu of Notice and the salary for the days worked in October 2008. This is proved by Appendix 14(a) and (b) in the Respondent response. I will, therefore not award the same to avoid double benefit.

As regards leave earned, the claimant prays for three month's salary valued as Kshs.52,056/-. The claim is not substantiated either in the claim or in the written submissions. The record tendered by the Respondent show that the claimant had exhausted his leave days as at the time of dismissal. Without an explanation from the claimant to the contrary I decline to award anything on this prayer.

I will also not award any damages for wrongful/unlawful dismissal because it is not provided for under the law. Even if the claimant meant compensation for unfair termination, I would still decline the relief because the termination was procedurally correct. I would have ordered payment of service gratuity but then I noted from the record that the claimant was paid pension. Section 35 of the Employment Act excludes employees who are members of a pension scheme from getting service gratuities.

Having found as I have done above, I proceed to dismiss the claim with no orders as the costs.

**Orders accordingly.**

**DATED and DELIVERED** at Nairobi this **26<sup>th</sup>** day of **October, 2012.**

**Onesmus Makau**  
**JUDGE**