



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO.2515 OF 2016**

**(Before Hon. Lady Justice Anna Ngibuini Mwaure)**

**JOHN KARIUKI NJUGUNA.....CLAIMANT**

**VERSUS**

**PG BISON KENYA LIMITED.....RESPONDENT**

**JUDGEMENT**

**INTRODUCTION**

1. The Claimant filed a memorandum of claim dated 6<sup>th</sup> December, 2016 and the Respondent put a response dated 9<sup>th</sup> February, 2017.

**CLAIMANT'S CASE**

2. The Claimant states he was employed by the Respondent as a beam saw Assistant Operator on or about 8<sup>th</sup> October, 2015.

He says he served the Respondent until 1<sup>st</sup> August, 2016 when he was irregularly terminated without notice on grounds of gross misconduct.

His salary at the time of termination was Kshs.16,500/=.

3. He says his termination was malicious and unlawful and he prays to be paid his terminal dues amounting to Kshs.224,019/= as particularized in paragraph 8 of the memorandum of claim plus interest and costs.

**RESPONDENT'S CASE**

4. The Respondent denies that he unlawfully terminated the Claimant without reason.

5. The Respondent avers the Claimant breached the terms of his employment by inter-alia failing to carry out duties in a fit and proper manner and failing to take care of the company's resources and absenting himself from work.

6. He says there were good and sufficient reasons and that fair procedure was followed in terminating the Claimant's employment. The Respondent says the Claimant is not entitled to the remedies claimed.

**ISSUES FOR DETERMINATION**

7. (a) The issues for determination will be whether Claimant was lawfully terminated from employment.

(b) Whether he is entitled to the remedies claimed.

**DECISION**

8. The Claimant's assertion was that he was terminated from employment without a notice. The reason for termination was for gross misconduct.

9. The Respondent in his response as well as in his submissions alleges Claimant's employment was terminated for gross misconduct and failing to be true and faithful employee generally.

10. I have considered the pleadings adduced by the parties and the evidence and submissions by the respective parties.

Section 45 (1) (2) of the Employment Act (2007) makes the following provisions regarding unfair termination of employment:-

(1) "No employer shall terminate the employment of an employee unfairly."

11. From the foregoing mandatory provision of the law termination of service does not pass the test of fairness unless the employer establishes by evidence that it was done on basis of fair reason(s) and upon following a fair procedure.

12. In this present case the Respondent did not give a specific reason as to why he terminated the Claimant's employment.

He also did not give him a notice or any specific grounds for termination of Claimant's employment. Actually Claimant avers he was working and was called and told to go home. He was not given termination letter.

13. The upshot of the above is that the Respondent has not established a valid reason why he terminated the Claimant's employment as required in Section 45 of the Employment Act 2007.

As well as Section 41 of the said Employment Act.

14. It is provided in Section 41 of the Employment Act that an employer shall before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee in a language the employee understands the reason for which the employer is considering termination of employee and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during the explanation."

In the case of **PETER KAMAU MWAURA AND PETER NJANJA NJUGUNA VS NATIONAL BANK LI NO.760 OF 2015** the learned judge held "having found that the Respondent has failed to prove a valid reason for terminating the Claimant's contract and further failed to prove that a fair procedure was followed, it is my holding that termination was unfair and unlawful within the meaning of Section 45 of the Employment Act."

15. Similarly in this case I am persuaded the Respondent failed to prove the fairness test as required in dealing with separation in labour matters in that he did not establish a valid reason for terminating Claimant's employment and did not follow fair procedure.

I therefore find the Claimant's employment was unlawfully terminated.

16. Having found as such I proceed to award the following remedies to the Claimant.

(1) Damages for unlawful termination for 2 months equivalent considering Claimant worked for about one year for the Claimant Kshs.49,500/=.

(2) One month salary in lieu of notice Kshs.16,500/=

(3) Service pay for one year Kshs.9,519/=.

Total Kshs.75,519/=.

17. Claimant is also awarded costs and interest at court rates from date of Judgment till full payment.

Orders accordingly.

Delivered, dated and signed in Nairobi this 17<sup>th</sup> day of February 2022.

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2) (d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Procedure Act (Chapter 21 of the Laws of**

**Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**