



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT NAIROBI**  
**CAUSE NUMBER 692 OF 2013**

**BETWEEN**

**PETER MUENDO KIILU.....CLAIMANT**

**VERSUS**

**SURVO GENERAL WORKS.....RESPONDENT**

*Rika J*

*Court Assistant: Emmanuel Kiprono*

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*B.M. Mung'ata & Company Advocates for the Claimant*

*Njonge & Company Advocates for the Respondent*

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**JUDGMENT**

1. The Claimant filed his Claim way back on 15<sup>th</sup> May 2013. He states he was employed by the Respondent as an Attendant, around March 2003. He rose the rank of Manager, a position he held as of 26<sup>th</sup> November 2012 when the Respondent terminated his contract. His salary at the time of termination was Kshs. 17,000 monthly. There was no valid reason, and fair procedure was disregarded. He worked for 9 years.

2. He states, he was not paid terminal dues, until 22<sup>nd</sup> January 2013 when his Advocates issued demand letter, that the Respondent paid service at Kshs. 76,500; annual leave at Kshs. 20,400; balance of salary for September, October and November 2012 at Kshs. 30,600; and notice at Kshs. 17,000. There was deduction of Kshs. 51,120 on account of Lopu Transporters, leaving the Claimant with a net of Kshs. 93,380 in terminal benefits.

3. He was denied leave for the period of 9 years. Deduction of Kshs. 51,120 was illegal. He prays for Judgment against the Respondent for: -

- a. Damages for unfair and unlawful termination.
- b. Damages for wrongful withholding of Claimant's terminal benefits.
- c. Annual leave over a period of 9 years at Kshs. 132,600.
- d. Refund of unlawful deductions at Kshs. 51,120.
- e. Costs.
- f. Interest.
- g. Any other suitable relief.

4. The Respondent filed its Statement of Response on 30<sup>th</sup> May 2013. Its position is that the Claim is unmerited. The Claimant misappropriated Respondent's money. He admitted misappropriation. He signed discharge voucher on receipt of terminal dues. He was paid terminal benefits even though summarily dismissed, and ordinarily would not have been entitled to such benefits. The Respondent prays for dismissal of the Claim.

5. Hearing took place on 9<sup>th</sup> July 2021. The Respondent did not attend Court. The Claimant restated the contents of his Statement of Claim in his evidence. He told the Court that the Respondent drafted discharge voucher, called him to office, and compelled him to sign the discharge voucher. He did not read. He was under duress. He was paid Kshs. 93,380 in an envelope. It was not the totality of his dues. He had worked for 9 years. He never went on annual leave. The Respondent alleged that Kshs. 59, 100 was lost. This was deducted from his dues. He was not charged with any criminal offence. The Claimant offered to have deductions made through salary check-off, but the Respondent still dismissed him.

6. Hearing closed on 9<sup>th</sup> July 2021 upon failure by the Respondent to give evidence. Parties were allowed 21 days each to file their Submissions. The Claimant confirmed compliance on 17<sup>th</sup> November 2021. No Submissions were received from the Respondent.

**The Court Finds: -**

7. The Claimant worked for the Respondent between 2003 to 26<sup>th</sup> November 2021. He avers he was dismissed by the Respondent for “*no apparent or justified reason.*”

8. He concedes that he was paid a net sum of Kshs. 93,380 in terminal benefits. He signed discharge voucher dated 22<sup>nd</sup> January 2013. He acknowledged receipt and discharged the Respondent from further liability in the following terms: -

*“ I Peter Kiilu have no further claim whatsoever to my Employer, for I have collected all my terminal dues. This shall be marked as my final settlement.”*

9. The Court has not been shown evidence of duress by the Claimant in executing this discharge. He was a Manager, with a clarity of mind, on the nature and legal effect of the discharge voucher. It was unwise of the Manager, to sign the discharge voucher without reading. There is no evidence that his signature was appended to the discharge voucher involuntarily.

10. The consequence of this is that he cannot claim additional termination benefits. His prayers on leave, salary arrears and unlawful deductions ought to have been put to the Respondent, before the Claimant executed discharge voucher.

11. The discharge voucher did not however address the issue of compensation for unfair termination. It is an issues which has to be resolved by the Court.

12. The Respondent pleads that it dismissed the Claimant for theft, and that the Claimant admitted theft. There is no evidence of theft adduced by the Respondent. The Respondent made allegations of theft, but did not prove these at the workplace, or in Court. These are mere allegations. The Respondent did not discharge its evidential burden under Sections 43 and 47[5] of the Employment Act.

13. The Claimant told the Court he was denied a fair hearing. The record does not show that the Respondent issued letter to show cause why disciplinary action should not be taken against the Claimant. There were no charges levelled against the Claimant. He was not called to a disciplinary hearing and found culpable of any employment offence.

14. Termination was unfair, in substance and procedure.

15. The Claimant worked for 9 years. His record was clean. He did not contribute to the circumstances leading to termination. He was paid terminal dues at Kshs. 93,380 after deductions. The Respondent states that ordinarily, the Claimant would not be entitled to terminal benefits, having left on summary dismissal. This is not correct. Sections 18[4] of the Employment Act binds an Employer to pay an Employee who is summarily dismissed, for lawful cause, all moneys, allowances, and benefits due to him, up to the date of his dismissal. ***The Claimant is awarded equivalent of 9 months' salary in compensation for unfair termination at Kshs. 153,000.***

16. There is no support for prayers for damages for withholding of terminal benefits and the rest of the prayers, save that the ***Claimant shall have the costs of the Claim and interest at court rates, from the date of Judgment till payment is made in full.***

***IT IS ORDERED: -***

***a. Termination was unfair.***

***b. The Respondent shall pay to the Claimant equivalent of 9 months' salary in compensation for unfair termination at Kshs. 153,000.***

***c. Costs to the Claimant.***

***d. Interest allowed at court rates, from the date of Judgment, till payment is made in full.***

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT MOMBASA, UNDER THE MINISTRY OF**

**HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 4TH DAY OF MARCH 2022.**

**James Rika**

**Judge**