



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

**AT NAIROBI**

**ELRC. CAUSE NO. 1498 OF 2016**

**KENNEDY OCHIENG NYALIANGA.....CLAIMANT**

**-VERSUS-**

**NYATI (2002) KENYA LIMITED.....RESPONDENT**

**JUDGMENT**

1. The Claimant brought this suit on 1.8.2016 alleging that he was employed by the Respondent as a Welder from 1.6.2000 to 10.9.2015 when he was dismissed unfairly and unlawfully. He therefore sought the following reliefs:

- a. The Court do find that the Respondent's action of summarily dismissing the Claimant from employment was unlawful and unfair.
- b. An Order directing the Respondent to pay the sum of Kshs. 186,950/- .
- c. An Order for the payment of Kshs. 138,000 to the Claimant being compensation for unfair termination of employment.
- d. An Order directing the Respondent to issue a Certificate of Service to the Claimant.
- e. The Cost of this suit with interest thereon at court rates
- f. Any other relief as the Court would deem just and expedient.

2. The facts of the case are that on 8.9.2015, he was assigned duty of installing down pipes for roofing with iron sheets at Boito Tea Factory in Kericho. By 12.30 p.m. the electric cable they were using became shorter for the work given and he and his colleague Mr. Dickson Onyango Okoth sought assistance from Bidii Engineering Company nearby and they were promised the same from 2.00 p.m. However, after lunch break, the Claimant and his said colleague were denied entry to their work place with the instructions from the foreman Mr. Silvester Owino who directed them to go home until they receive his call on 9.9.2015.

3. The foreman never got in touch with the Claimant on 9.9.2015 but on 10.9.2015, the foreman informed him via SMS that his employment had been terminated. According to the Claimant, the said termination was unfair because it was not grounded on any valid reason and he was not accorded any prior hearing as required under the Constitution and the Employment Act.

4. The Respondent was served with summons and the claim but did not file defence to rebut the facts set out above by the Claimant. Consequently the Claimant urged the court to enter judgment as prayed in the Claim.

5. The issues for determination are:

- a. Whether the Claimant was unfairly dismissed.
- b. Whether he is entitled to the reliefs sought.

6. Under section 45 of the Employment Act, Termination of Employment contract by the employer is unfair if the employer fails to prove that it was grounded on valid reason and that it was done in accordance with a fair procedure. In this case the Respondent never filed defence to controvert the claim and did not also call any evidence. It follows therefore that Respondent did not discharge the burden of proving of a valid reason and fair procedure as required under section 45 of the Act. Consequently, I find and hold that the Claimant has proved that his dismissal by the Respondent was unfair and unlawful within the meaning of section 45 of the Act.

**Reliefs**

7. In view of the foregoing, I award the Claimant one month salary in lieu of notice plus 12 months salary compensation for unfair termination. In granting the said compensation, I have considered that the Claimant worked for 15 years without any warning letter. I have also considered that he did not contribute to the dismissal through misconduct. The Claim for unpaid salary for 9 days worked is also granted because there is no evidence that it was paid.

8. The claim for severance pay is dismissed because the termination was not through redundancy. In case he meant to claim for service pay, the same also fails because he was a member of NSSF and according to the NSSF statement produced, the employer remitted his contributions regularly.

9. In conclusion, I enter judgment for the Claimant in the following terms:

<b>Notice .....</b>	<b>Kshs. 11,500.00</b>
<b>Compensation .....</b>	<b>Kshs. 138,000.00</b>
<b>9 day salary .....</b>	<b>Kshs. <u>3,450.00</u></b>
<b>TOTAL .....</b>	<b>Kshs. <u>152,950.00</u></b>

The Claimant will also have costs and interest at court rates from the date hereof. However, the award is subject to statutory deductions.

Orders accordingly.

**Dated, signed and delivered in Nairobi this 5th day of February, 2021.**

**ONESMUS N. MAKAU**

**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> April 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28(3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.**

**ONESMUS N. MAKAU**

**JUDGE**