



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 1342 OF 2017**

(Before Hon. Lady Justice Hellen S. Wasilwa on 11<sup>th</sup> March, 2020)

GIDEON JUDAH NYUMBU.....CLAIMANT

VERSUS

ASILLE TRADING (E.A) LIMITED.....RESPONDENT

**JUDGEMENT**

1. The Claimant herein filed a Memorandum of Claim dated 12<sup>th</sup> July, 2017, where he states that he was unlawfully, illegally and un-procedurally terminated from the Respondent's employment. He further contends that the Respondent failed and/or ignored to pay his terminal benefits at the time of his separation.
2. In his Memorandum of Claim the Claimant avers that he was employed by the Respondent herein a limited liability company on 1<sup>st</sup> October, 2012 in the position of Assistant Engineer earning an initial monthly payment of Kshs. 26,029/-.
3. The Claimant further averred that at the time of his employment he was not issued with any employment contract but maintained that his details were recorded in a book and a copy of his Identity Card taken and was later issued with an employment card.
4. He further avers that he performed his duties diligently and to the Respondent's satisfaction and in October 2016 his salary was increased to Kshs. 30,000/- per month. He further averred that on 27<sup>th</sup> February, 2014 his services were unfairly terminated by the Respondent herein.
5. The Claimant maintained that no reason was given. He further contended that a letter dated 5/4/2017 from the labour office was issued to the Respondent requesting for payment of his terminal dues. However, none were paid prompting filing of the instant Claim.
6. Aggrieved by the decision by the Respondent to terminate his services the Claimant filed the instant Claim seeking the following reliefs:-

**a. A declaration that the said termination was unfair and unlawful.**

**b. An Order directing the Respondent to pay the sum of Kshs. 151,000 comprising of the following:-**

**i. Gratuity  $(30,000/30 \times 15 \times 4)$  Kshs. 60,000/=**

**ii. Unpaid leave**

**$(30,000/30 \times 21 \times 52/12)$ Kshs. 91,000/=**

**TotalKshs. 151,000/-**

**c. An order for the payment of Kshs. 360,000/- to the Claimant being compensated for unfair termination of employment.**

**d. Interest on the monetary orders from the date of filing of the Claim.**

**e. An Order directing the Respondent to issue a Certificate of Service to the Claimant.**

**f. The costs of this suit with interest thereon at Court rates.**

**g. Any other relief as the Court would deem just and expedient.**

7. The Respondent though served with the Claim and the summons filed in this matter failed to enter appearance and file its defence. The matter therefore proceeded as an undefended Claim on 5<sup>th</sup> December, 2019 with the Claimant testifying on his own behalf.

#### **Claimant's Case**

8. In his evidence in chief the Claimant, CW1 sought to have his witness statement dated 12<sup>th</sup> July, 2017 adopted as his evidence in chief, a request that was allowed by the Court. In his statement, CW1 reiterated the averments made in his Statement of Claim.

9. CW1 further sought to have his documents dated 12<sup>th</sup> July, 2017 and filed in Court on 17<sup>th</sup> July, 2017 adopted as exhibits in this matter, a request that was also allowed by this Court.

10. CW1 further testified that he was dismissed on 27/2/2014. He further stated that no reason was given for his termination. He contended that his termination was therefore unfair, unlawful and contrary to the mandatory provisions of the Employment Act.

11. CW1 urged this Honourable Court to allow his Claim in terms of the reliefs sought in the statement of Claim.

#### **Submissions by the Claimant**

12. The Claimant submitted that his termination was unfair and unlawful as the Respondent failed to comply with the mandatory provisions of Sections 43 and 45 of the Employment Act, 2007. To buttress this argument he relied on the findings in the case of **Walter Ogal Anuora Vs Teachers Service Commission (2013) eKLR** where the Court was of the view that for a termination of employment to pass the fairness test there must be both substantive justification and procedural fairness. The Court went on to say that substantive justification has to do with establishment of a valid reason for termination while procedural fairness addresses the procedure adopted by the employer in effecting termination.

13. Further reference was made to the case of **Mary Mutanu Mwendwa Vs Ayudi Ninos De Africa- Kenya (2013) eKLR**.

14. The Claimant further submitted that his termination from the Respondent's employment was both substantively and procedurally unfair as his testimony remains uncontroverted the Respondent having failed to take part in these proceedings.

15. The Claimant therefore urged this Honourable Court to be guided by the above authorities and hold that his termination was indeed unlawful, un-procedural and unfair.

16. The Claimant maintained that he is entitled to the reliefs sought in his Claim and urged this Court to allow the same as prayed. For emphasis the Claimant cited and relied on the case of **Abisalom Ajusa Magomere Vs Kenya Nut Company Limited (2014) eKLR**.

17. I have examined all the evidence and submissions presented before me in this case by the Claimant. The Claimant was able to prove through his employment I/D that he was employed by the Respondent as an Assistant Engineer. He also exhibited a letter dated 26.1.2016 from the Respondent that they had increased his salary to 29,000/=. His pay slips shows his bank pay in March 2017 was 30,000/=.

18. It is however not clear how the employment relationship between the Claimant and the Respondent ended and there is no reason given from Respondent as to why the Claimant's services were terminated.

19. In absence of the Respondent submitting any evidence before this Court, the Claimant's case remains uncontroverted.

20. The Claimant has proved his case against the Respondents and he is entitled to judgement as prayed as follows:-

#### **1. Service pay for 4 years**

$$= \frac{1}{2} \times 30,000 \times 4 = 60,000/=$$

#### **2. Unpaid leave for 3 years**

$$= 3 \times 30,000 = 90,000/=$$

#### **3. 12 months' salary as compensation for unfair termination**

$$= 30,000 \times 12 = 360,000/=$$

$$\underline{\text{Total} = 510,000/=}$$

**Less statutory deductions**

4. The Respondent will issue the claimant with a certificate of service.

5. The Respondent will pay costs of this suit plus interest at court rates with effect from the date of this judgement.

Dated and delivered in open Court this 11<sup>th</sup> day of March, 2020.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

**In the presence of:**

No appearance for parties