

Unfair/wrongful termination

6. Under section 45(2) of the Employment Act, termination of employment is unfair and therefore unlawful if the employer fails to prove that it was grounded on a valid and fair reason and that it was done after following a fair procedure. A valid and fair reason is one that relates to the employees conduct, capacity and compatibility or based on the employer’s operational requirement, fair procedure mainly refers to the aspect of according the employee a hearing before termination.

7. In this case, the claimant’s evidence that she was wrongfully and unlawfully terminated has not been contested or rebutted. The respondent never filed defence nor tendered any evidence and as such the said burden of proof has not been discharged on a balance of probability. Consequently, I return that the termination of the claimant’s employment contract was done without a valid reason and without following a fair procedure and that rendered it unfair within the meaning of section 45 of the Act.

Reliefs

8. Under section 49(1) of the Act, I award the claimant one month salary in lieu of notice plus 12 months’ salary compensation for unfair termination. In awarding the said compensation, I have considered the claimant’s long service of almost 10 years and the fact that she did not contribute to the termination through misconduct.

9. I further award her the claim for leave at the rate of 21 days per year. The claim for House Allowance is dismissed because the appointment letter produced described her salary as gross pay. Finally, the claim, for unpaid salary for 10 months before termination is allowed as prayed.

Disposition

10. In conclusion I enter judgments for the claimant against the respondent in the following terms:

- a. Notice13,000
- b. Compensation.....156,000
- c. Leave for 9 years.....81,900
- d. Salary arrears.....130,000

263,900

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The claimant will also have costs and interest from the date hereof but the decreed sum shall be less statutory deductions.

Dated, Signed and Delivered in Open Court at Nairobi this 31st day of January 2019

ONESMUS N. MAKAU

JUDGE