



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 1816 OF 2014**

**RONALD GIDEON ESHITERA.....CLAIMANT**

**v**

**METAL CROWNS LIMITED.....RESPONDENT**

**JUDGMENT**

1. This Cause was heard on 3 May 2018 and on 15 November 2018. Ronald Gideon Eshitera (Claimant) testified.
2. After the close of the Claimant's case, the Court gave the Respondent up to 10.15am to present its witness but by 10.30am, the witness had not been presented, and the Court directed that the Respondent's case be closed.
3. The Claimant filed his submissions on 26 November 2018 while the Respondent filed its submissions on 18 January 2019.
4. The Court has considered the pleadings, evidence on record and the submissions and condensed the Issues for determination under the sub headings hereunder.

**Unfair termination of employment**

**Procedural fairness**

5. The Claimant's employment was terminated through a letter dated 18 September 2012 and the reason given was *unethical happenings*.
6. The termination of employment was preceded with a show cause letter dated 18 September 2012 which called upon the Claimant to respond to allegations of a shortage of 500kgs of gas. The Claimant replied to the show cause the same day.
7. In terms of sections 35(1)(c) and 41 of the Employment Act, 2007, the Court is satisfied that the Respondent complied with the statutory requirements as to procedural fairness.

**Substantive fairness**

8. By dint of sections 43 and 45 of the Employment Act, 2007, an employer is under an obligation to prove the reasons for terminating the services of an employee and that the reasons are valid and fair.
9. In the instant case, the Respondent squandered the opportunity made available to it to present a witness or lead evidence to satisfy the two provisions of the law.
10. The Claimant's explanation in the response to the show cause that the tank capacity was 1843 kgs and that it was filed was not rebutted.
11. The Court can therefore conclude that the termination of the Claimant's employment was not for valid and fair reasons.

**Overtime**

12. The Claimant did not give any evidence in relation to overtime work or lay a foundation to this head of claim and it stands to be dismissed.

**12 months' salary in lieu of notice**

13. The Court notes that the Claimant was paid the equivalent of 40 days' pay in lieu of notice.

14. In terms of the termination clause in the employment letter, there is no legal or any other basis for the Claimant to get the equivalent of 12 months' salary in lieu of notice.

**Salary arrears of Kshs 60,897/-**

15. Equally the Claimant did not lay any evidential basis for this head of claim and it stands not proved.

**Trade union dues**

16. The Claimant did not disclose the Union of which he was a member and the particulars of unremitted dues or even the periods in contention. The relief is declined.

**Compensation**

17. The Claimant served the Respondent from 2008 to 2012, and in consideration of the length of service, the Court is of the view that the equivalent of 4 months gross wages as compensation would be appropriate (gross wage was pleaded as Kshs 60,897/-).

**Conclusion and Orders**

18. The Court finds and holds that the termination of the Claimant's employment was unfair and awards him

(a) Compensation **Kshs 243,588/-**

19. Claimant to have costs on half scale.

**Delivered, dated and signed in Nairobi on this 1<sup>st</sup> day of February 2019.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Mr. Omondi instructed by Oduor Henry John & Co. Advocates

For Respondent Ms. Magu instructed by Morara Apiemi & Nyangito Advocates

Court Assistant Lindsey