



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO. 465 OF 2014**

**HUMPHREY ODHIAMBO ONDIWO.....CLAIMANT**

v

**THE TRUE BLAQ ENTERTAINMENT LTD.....RESPONDENT**

**JUDGMENT**

1. Humphrey Odhiambo Ondiwo (Claimant) instituted legal proceedings against True Blaq Entertainment Ltd (Respondent) and he stated the Issues in Dispute as

1. Wrongful dismissal
2. Payment of salary in lieu of notice
3. Discrimination
4. Payment of terminal benefits.

2. Although the Respondent entered Appearance through Odero Osiemo & Co. Advocates, no *Response* was filed.

3. On 12 July 2018, when the Cause first came for hearing, the Court directed that the Cause proceed to formal proof after the Respondent's advocate failed to apply for leave to file a Response, but rather sought for time to apply to cease from acting (no such application was filed).

4. The Cause was heard on 20 February 2019 when the Claimant testified and closed his case. The advocate holding brief for the Respondent unceremoniously left the Court before the hearing commenced.

5. The Claimant filed his submissions on 18 March 2019 (should have been filed by 8 March 2019).

6. The Court has considered all the material placed before it.

**Breach of contract/statute**

7. The Claimant sought Kshs 30,000/- being salary for May and June 2012.

8. The Claimant testified that he was dismissed on 5 June 2012. He is therefore entitled to the salary as of right up to the date of separation.

9. Because the Claimant did not compute the salary he would have earned over the 5 days in June 2012,

the Court will only allow Kshs 15,000/- being salary for May 2012.

### **Pay in lieu of notice, leave, off days and service pay**

10. The Claimant reported a dispute to the Labour office.

11. The Labour Officer attempted to resolve the dispute but the Respondent did not cooperate after which the Labour Officer computed the pay in lieu of notice, leave, off days and service pay due to the Claimant as Kshs 93,000/- (computations by the Labour Officer was produced as an exhibit).

12. The Court has no reason to doubt the computations bearing in mind the role and expertise of Labour Officers in resolution of employment disputes.

13. The computations remaining unrebutted, the Court in effect allows the dues as computed.

### **Unfair termination of employment**

14. The Claimant testified that he fell sick and that after a stint of hospitalisation he reported back to work, he was instructed to return home and wait to be called. The call never came.

15. According to the Claimant, when he went to inquire on his employment status on 5 June 2012, a guard at the entry (called Leonard) informed him that there were instructions not to allow him in because he was no longer an employer of the Respondent.

16. The Claimant then sought legal assistance.

17. The evidence on the circumstances of separation remained unchallenged, and the Court will find that there was unfair termination of employment as there was no *written notice* as contemplated by section 35(1)(c) of the Employment Act, 2007 or the hearing process envisaged by section 41 of the Act.

### **Compensation**

18. The Claimant was employed in 2009 and was dismissed in 2012.

19. In consideration of the length of service, the Court is of the view that the equivalent of 3 months' gross wages would be appropriate as compensation (gross wage was Kshs 15,000/-).

### **Certificate of Service**

20. A certificate of service is a statutory right and the Respondent should issue one to the Claimant within 15 days.

### **Conclusion and Orders**

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

(a) Compensation	Kshs 45,000/-
(b) Terminal benefits	Kshs 93,000/-
<b>TOTAL</b>	<b>Kshs 138,000/-</b>

22. Certificate of Service to be issued within 15 days.

23. Claimant did not file submissions within agreed timelines and is denied costs.

**Delivered, dated and signed in Nairobi on this 29<sup>th</sup> day of March 2019.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Mr. Agina instructed by Agina & Associates Advocates

For Respondent Odero Osiemo & Co. Advocates

Court Assistant Lindsey