



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MALINDI**  
**CAUSE NUMBER 21 OF 2018**

[Formerly Cause Number 876 of 2016 at E&LRC Mombasa]

**BETWEEN**

**ANDREW JUMA ODHIAMBO.....CLAIMANT**

**VERSUS**

**RAJESH KAPOOR SHAH t/a**

**7 TO 7 COMPANY LIMITED.....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

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*Mogaka Bwongaki & Company Advocates for the Claimant*

*Chepkwony & Associates, Advocates for the Respondent*

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**JUDGMENT**

1. In *Malindi E&LRC Cause Number 20 of 2018, Enock N. Mongeri v. Rajesh Kapoor t/a 7 to 7 Company Limited*, the Claimant was employed by the Respondent, at the Respondent's supermarket in Malindi, as a Shop Attendant.
2. In the instant Claim, the Claimant was a Colleague of Claimant in the above Cause, at Respondent's supermarket.
3. Both Claimants had their contracts terminated in similar circumstances. Similar facts are involved, and the Claimants were Witnesses for each other, in their respective Claims. The Claims were heard on the same date. The files' history is similar. The only significant variation in the Claimants' evidence, is that the Claimant herein Andrew Juma Odhiambo, earned a higher monthly salary of Kshs. 22,000, as pleaded at paragraph 3 of his Statement of Claim, and served for a longer period of 7 years. It is noted also that Odhiambo was notified about termination on 29<sup>th</sup> July 2016. The effective date was 31<sup>st</sup> July 2016. He only had notice of 1 day. Lastly, whereas Odhiambo prays for 53 days of annual leave, he concedes to have received Kshs. 30,000 in annual leave pay.
4. The Court shall therefore adopt its findings and reasoning in Cause Number 20 of 2018, in determining the instant Claim. It was held by the Court *inter alia*, that: -
  - a) There was no valid reason, or reasons to justify termination.
  - b) There was no disciplinary hearing in any form.
  - c) The claims for severance pay, overtime and legal fees were not well-founded.

d) The Claimant was awarded compensation, balance of notice, annual leave, certificate of service, costs and interest.

5. There shall be Judgment in favour of the Claimant herein, in terms given at paragraph 4 [d] of this Judgment, subject to such variation as is necessary.

IN SUM, IT IS ORDERED:-

*a) Termination was unfair.*

*b) The Respondent shall pay to the Claimant: equivalent of 7 months' salary in compensation for unfair termination at Kshs. 154,000; 1 month salary in lieu of notice at Kshs. 22,000; and balance of annual leave at Kshs. 14,846 – total Kshs. 190,846.*

*c) Certificate of Service to issue.*

*d) Costs to the Claimant.*

*e) Interest allowed at 14% per annum from the date of Judgment till payment is made in full.*

Dated and delivered at Malindi, this 28<sup>th</sup> day of June 2019.

**James Rika**

**Judge**