



**REPUBLIC OF KENYA**

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

**CAUSE NO. 1404 OF 2016**

**JUMA WASHINGTON SHIKUKU.....CLAIMANT**

**v**

**POLYFLEX LIMITED.....RESPONDENT**

**JUDGMENT**

1. On 20 August 2018, the parties filed an *Agreed List of Issues* in which they sought the Court's determination of the following questions
  1. Whether the Respondent had a valid reason to terminate the Claimant's employment
  2. Whether the Respondent observed procedural fairness and/or principles of natural justice in terminating the Claimant's services
  3. Whether the Claimant is entitled to the terminal benefits sought in the Statement of Claim and
  4. Who should pay the costs of the suit and interest?
2. The Cause was heard on 3 June 2019. Juma Washington Shikuku (Claimant) and Victor Otipa, Human Resources Manager of Polyflex Ltd (Respondent) testified.
3. The Claimant filed his submissions on 20 June 2019 while the Respondent filed its submissions on 9 July 2019.
4. The Court has considered the pleadings, evidence and submissions.

**Whether there was unfair termination of employment**

**Procedural fairness**

5. The Claimant was employed as a Printing Machine Operator in 2010.
6. On 26 February 2016, the Respondent issued a *show cause notice* to the Claimant to explain within the course of the day why disciplinary action should not be taken against him.
7. The allegation the Claimant was to respond to was that due to lack of diligence, he failed to detect an anomaly which led to high wastage while operating a FCPR 1 machine on 24 February 2016.
8. The *show cause* was followed up with an oral hearing before a Disciplinary Committee on the same day.
9. The minutes of the hearing were produced and they show that the Claimant was afforded an opportunity to make representations, and that he was accompanied by a colleague.
10. Although the Claimant denied receiving the *show cause* notice, it had a signature acknowledging receipt.
11. The Court finds it probable it was delivered to the Claimant.
12. The Court is satisfied that the Respondent met the statutory procedural fairness requirements as contemplated by sections 35(1)(c) and 41 of the Employment Act, 2007.

### **Substantive fairness**

13. Pursuant to sections 43 and 45 of the Employment Act, 2007, an employer has the burden of proving the reasons for terminating an employment contract, and that the reasons were valid and fair.

14. The Court has already set out above the allegations which led to the termination of the Claimant's employment.

15. The Court has looked at the minutes of the disciplinary hearing. The said minutes capture the Claimant as admitting that there was a mistake.

16. In light of the admission during the disciplinary hearing, and the filed witness statement by the Human Resources Officer at the material time that the Claimant was offered another chance but declined, and that the Claimant signed a *Disclaimer* that he had no further claims against the Respondent, and further that the Claimant did not even attempt to plead or prove coercion in signing the *Disclaimer*, the Court finds that the Respondent had and has proved valid and fair reasons to terminate the Claimant's employment.

17. Compensation and pay in lieu of notice as remedies therefore do not avail the Claimant (despite receiving and acknowledging pay in lieu of notice, the Claimant still pleaded for the same).

### **Certificate of Service**

18. A *certificate of service* is a statutory entitlement and the Claimant should collect the same as the Respondent exhibited a copy of the same.

### **February 2016 salary**

19. The Claimant sought Kshs 32,408/- on account of earned wages.

20. Among the dues paid to and acknowledged by the Claimant was Kshs 17,302/- being salary for February 2016, and house allowance.

21. This head of claim was not proved and is declined.

### **Conclusion and Orders**

22. The Court finds and declares that the termination of the Claimant's employment was fair.

23. The Cause is dismissed with no order as to costs.

**Delivered, dated and signed in Nairobi on this 19<sup>th</sup> day of July 2019.**

**Radido Stephen**

**Judge**

**Appearances**

**For Claimant Mr. Nyabena instructed by Nyabena Nyakundi & Co. Advocates**

**For Respondent Ms. Achieng instructed by Wasuna & Co. Advocates**

**Court Assistant Lindsey**