



**REPUBLIC OF KENYA**

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

**CAUSE NO. 725 OF 2015**

**MAKO MOGIRE KERITA.....CLAIMANT**

**VERSUS**

**SALAMA SUPPORT SERVICES.....RESPONDENT**

**JUDGMENT**

1. This Cause was heard on 1 April 2019. Mako Mogire Kerita (Claimant) and Benson Liyapo, Operations Manager and Amos Wanjala, Supervisor with Salama Support Services (Respondent) testified.
2. The Claimant filed submissions on 26 April 2019 while the Respondent filed its submissions on 4 June 2019.
3. The Court has considered the pleadings, evidence and submissions.
4. The parties agreed to some 4 Issues as arising for the Court's determination.

**When was the Claimant employed by the Respondent?**

5. The Claimant's pleaded case was that he was employed by the Respondent on 1 March 2013, while in the filed witness statement which he adopted, he stated that he was employed in April 2013.
6. The Respondent's pleaded case was that the Claimant was employed in June 2014. The Operations Manager stated in the witness statement that the Claimant was employed in June 2014.
7. Section 9 of the Employment Act, 2007 places a burden on the employer to issue a written contract of service if the contract is for more than 3 months.
8. The Respondent did not issue a formal contract to the Claimant, and by virtue of section 10(7) of the Employment Act, 2007, the Court will hold that the employment relationship started in April 2013.

**Unlawful termination of employment**

9. The Claimant asserted that the Respondent unlawfully terminated his employment on 24 January 2015 because no notice was issued.
10. The Respondent contended that the termination of the Claimant's employment was fair, and was predicated on *misconduct and poor performance*, and that the Claimant had been issued with 3 warning letters before the dismissal.
11. The Claimant was paid by the month.
12. Pursuant to section 35(1)(c) of the Employment Act, 2007, the Respondent should have issued a written notice of termination of employment of at least 28 days.
13. The Respondent however took the position that this was a case of *summary dismissal*.
14. Assuming that this was a case of *summary dismissal*, then the Respondent was under a statutory obligation by dint of section 41(2) of the Employment Act, 2007 to hold a hearing and consider any representation from the Claimant.
15. There was no evidence that the Claimant was afforded an opportunity to make representations as required by the aforesaid statutory

provision when he resumed from leave on 25 January 2015, before he was dismissed around 27 January 2015.

16. The Court therefore finds that the *summary dismissal* was not in compliance with the procedural statutory requirements.

17. On the validity and fairness of the reasons, the Respondent did not lead any evidence that the Claimant's *performance* was wanting or demonstrate that he was placed on a performance evaluation/appraisal program.

*Pay in lieu of notice and compensation*

18. On account of the unfair termination of employment, the Court holds that the Claimant is entitled to the equivalent of 1 month pay in lieu of notice and, compensation equivalent to 2 months gross wages (the proved wage in Court was Kshs 11,000/- per month).

19. The Court has awarded the compensation based on the Claimant's length of service of about 2 years.

**Whether Claimant was paid all dues**

20. The Claimant did not set out with any clarity the dues he alleged were not paid.

**Certificate of Service**

21. A *certificate of service* is a statutory entitlement, and the Respondent should issue one to the Claimant within 15 days.

**Conclusion and Orders**

22. The Court finds and declares that the summary dismissal of the Claimant was unfair and awards him

(a) Salary in lieu of notice	Kshs 11,000/-
(b) Compensation	Kshs 22,000/-
<b>TOTAL</b>	<b>Kshs 33,000/-</b>

23. Respondent to issue certificate of service within 15 days.

24. Claimant to have costs.

**Delivered, dated and signed in Nairobi on this 12<sup>th</sup> day of July 2019.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant                      Ms. Makori instructed by Mogeni & Co. Advocates

For Respondent                  Mr. Kimathi instructed by Costin & Webster Law

Court Assistant                  Lindsey