



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 2074 OF 2014**

**ELIJAH OGOTI NYAMWEYA.....CLAIMANT**

**v**

**SOCFINAF COMPANY LIMITED.....RESPONDENT**

**JUDGMENT**

1. On 30 April 2019, Elijah Ogoti Nyamweya (Claimant) filed a *Statement of Agreed Issues* in which he identified the Issues for the Court's determination as

1. Whether the Claimant was an employee of the Respondent.
2. Whether the Respondent acted maliciously in the course of employment of the Claimant.
3. Whether the Claimant was procedurally terminated by the Respondent.
4. Whether the Claimant is entitled to the prayers sought in the Claim.
5. Whether the Claimant is entitled to be awarded costs of this Claim.

2. The Cause was heard on 13 June 2019. The Claimant testified while the Respondent opted not to call any witness (es) or lead any evidence.

3. The Claimant filed his submissions on 12 July 2019 while the Respondent filed its submissions on 30 July 2019.

4. The Court will adopt the Issues as proposed by the Claimant. The Court has considered the submissions.

**Employment relationship**

5. The Respondent admitted in paragraph 3 of the Response that the Claimant was employed on 29 May 2003. The employment relationship was therefore not an Issue in dispute.

**Unfair termination of employment**

6. Issues 2 and 3 addressed the question whether there was unfair termination of employment.

**Procedural fairness**

7. Section 35(1)(c) of the Employment Act, 2007 demands that an employer issues a *written notice of termination of employment* of at least 28 days if the employee is paid by the month (unless it is a case of summary dismissal).

8. Section 41 of the Act on the other hand contemplates an employer affording an employee an opportunity to make representations before a decision to terminate employment is taken.

9. The Claimant was arrested on 7 August 2012 after a complaint by the Respondent. He was charged with the offence of stealing by servant

on 8 August 2012, but was acquitted on 14 September 2016.

10. During testimony, the Claimant stated that upon release by the Court on bond, he went back to work but was denied entry and was directed to go and see the Respondent's Security Manager at the head office. Initial attempts to meet the Manager did not succeed.

11. The Claimant stated that when he eventually met the Human Resources Manager on 11 August 2012, he informed him that his services were no longer required.

12. The Respondent did not lead any evidence but had pleaded in paragraph 7 of the *Memorandum of Defence* that the Claimant after release on bond only returned to seek his terminal dues in the company of a union official but because they could not agree with the Respondent's computations, they left only to serve Court process.

13. According to the *Response*, there was no unfair termination of employment because it is the Claimant who indicated he was no longer interested in continuing with work.

14. The Claimant's sworn testimony though interrogated was not rebutted as the Respondent did not lead any evidence.

15. If the Claimant was in breach of his contractual obligations by failing to report to work, the Respondent should at least have informed him that it considered the relationship at an end, or sought an explanation for the absence through a show cause notice.

16. The Respondent, the *innocent party* may also have issued a written notice of termination on account of Claimant's failure to report to work. There was no such notice.

17. Unfortunately, the Court has no option but to conclude that there was unfair termination of employment, as it is only the evidence of the Claimant on record.

### **Appropriate remedies**

#### **Reinstatement**

18. Considering that more than 3 years elapsed before determination of the dispute, the Court holds that reinstatement would not be an appropriate remedy.

#### **Compensation**

19. The Claimant served the Respondent for about 9 years, and in consideration of the length of service, the Court is of the view that compensation equivalent to 6 months gross wages would be appropriate (gross wage as of July 2012 was Kshs 14,799/-).

#### **Other reliefs/dues**

20. The Claimant did not give particulars of any other remedies/dues sought and the reliefs/dues are declined.

### **Conclusion and Orders**

21. The Court finds and holds that because the Respondent did not lead any evidence, there was unfair termination of employment and awards the Claimant

(i) Compensation **Kshs 88,794/-**

22. Claimant to have costs.

**Delivered, dated and signed in Nairobi on this 20<sup>th</sup> day of September 2019.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Mr. Ochako instructed by J. Okerosi Ochako & Co. Advocates

For Respondent Mr. Kilonzo instructed by Federation of Kenya Employers

Court Assistant Lindsey