



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE 801 OF 2015**

(Before Hon. Lady Justice Hellen S. Wasilwa on 1<sup>st</sup> October, 2019)

**DENNIS KIPRONO .....CLAIMANT**

VERSUS

**INILEVER KENYA LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The Claimant filed the instant Claim on 14<sup>th</sup> May, 2015, through the firm of Kamunda Njue & Company Advocates seeking damages for wrongful termination from his employment by the Respondent and failure and/or refusal to pay terminal dues owed to him.
2. The Claimant states that he was employed by the Respondent vide its letter dated 1<sup>st</sup> August, 2013 as an Accounts Assistant. He further states that his employment was subject to a six (6) months' probation period that he successfully concluded on 31<sup>st</sup> January, 2014 earning a monthly salary of Kshs. 121,272.42/-.
3. The Claimant contends that prior to this engagement he had worked for the Respondent as a Temporary Contract Employee between the period of December 2011 and July 2013 when he was offered permanent employment. He further contended that he worked for the Respondent for a cumulated period of 2 years 9 months.
4. The Claimant avers that he performed his duties diligently and to the Respondent's satisfaction until 19<sup>th</sup> August, 2014 when the Respondent without any colour of right terminated his services. He contends that the termination was unfair, unlawful and un-procedural. He added that no reasons were given for his termination
5. The Claimant further avers that the Respondent's actions of dismissing him constitute an unfair dismissal in the terms of Section 45 of the Employment Act, 2007.
6. In his Memorandum of Claim the Claimant prays for Judgment be entered against the Respondent for:-
  - a. **An Order that the Claimant be paid his dues of Kshs. 328,454.26 being service pay and accrued leave days.**
  - b. **Damages equivalent to One (1) years' salary as compensation for wrongful termination.**
  - c. **An Oder that the Claimant be issued with a Certificate of Service.**
  - d. **Interest on (a) and (b) above at Court rates until payment in full.**
  - e. **Costs of the suit.**
  - f. **Any other relief that this Honourable Court may deem fit and just to grant.**
7. The Respondent in its Reply to the Memorandum of Claim dated and filed in Court on 13<sup>th</sup> June, 2015, in which it admits having employed the Claimant vide its appointment letter dated 1<sup>st</sup> August, 2013. It further averred that it did terminate the Claimant's services on 1<sup>st</sup> August, 2014 on account of poor performance.

8. The Respondent contends that it did give the Claimant an opportunity to defend himself on various meetings with his line managers prior to his termination. It is further contended that the Respondent was therefore justified to terminate the Claimant's services and that due process was followed.

9. The Respondent further contends that it did pay the Claimant all his terminal dues at the time of separation and that consequently the Claimant is not entitled to any further payments having been paid his terminal dues at the time of separation.

10. The Respondent states that it shall through its Advocates on record deliver to the Claimant his Certificate of Service to the Claimant's Advocates. It is further the Respondent's assertion that the Claimant is not entitled to the reliefs sought in his Memorandum of Claim having been paid all his dues at the time of separation.

11. The Respondent avers that the Claimant is not entitled to service pay having been a member of the National Social Security Fund. It is further averred that the Claimant is not entitled to any compensation for wrongful termination as his termination was justified and procedural in the circumstances.

12. The Respondent further prays that the claim herein be dismissed with costs.

### **Evidence**

13. On 13<sup>th</sup> June 2019, the Claimant (CW1) testified that he worked for the Respondent for a cumulative period of two years and nine months. CW1 further testified that he was employed by the Respondent from 1<sup>st</sup> August 2013, further that his employment was subject to a probationary period of 6 months which was extended in January 2014. He further testified having complained to the Respondent vide his email of 25/7/2014 that he had not yet been confirmed to permanent employment.

14. CW1 confirmed having attended a meeting with his section head with regards to poor performance. He confirmed having explained himself at the said meeting and that on 19/8/2014 his services were terminated. CW1 further contended that he was not informed of the reason for his termination.

15. CW1 contended that he was not paid his terminal dues at the time of separation averring that the only payment he received from the Respondent herein was his September salary. CW1 confirmed having been a member of NSSF and that he was eligible to join pension fund after his confirmation.

16. On re-examination, CW1 insisted that he was not issued with any warning letter prior to his dismissal on his performance. He further insisted that his last payslip failed to indicate any payment of any of his terminal dues.

17. CW1 further testified that he did not proceed on leave during the subsistence of his employment with the Respondent adding that he had outstanding leave days and urged the Court to allow his prayer for payment of the same.

18. CW1 also confirmed having been a member of NSSF.

19. RW1, **Anneliese Kinanu**, the Human Resource Business Partner, Function departments of the Respondent testified on behalf of the Respondent herein. She adopted her witness statement as her evidence in chief.

20. In her statement, RW1 reiterated the averments made in the Respondent's Memorandum of defence filed on 13<sup>th</sup> July, 2015. She further averred that the Respondent in its review of the Claimant's performance was of the view that he had not met its expectations and as a result, he (the Claimant) was given another opportunity to improve his performance.

21. RW1 states that the Respondent with the Claimant's consent resorted to extend his probation period for a further 6 months. RW1 further averred that the Respondent was not satisfied with the Claimant's performance during the entire 12 months period he was on probation a result of which it made a managerial decision to formally terminate the Claimant's services vide its letter dated 19<sup>th</sup> August, 2014 and issued him with 1 months' notice.

22. She contended that the Claimant was paid all his dues at the time of separation and urged the Court to dismiss the instant Claim with costs to the Respondent.

23. On cross-examination, RW1 confirmed that the Claimant's employment was on a fixed term contract that were normally extended despite the fact of not having any document to prove extension of the same in Court.

24. RW1 also confirmed that upon confirmation of his contract the Claimant was expected to sign a service Agreement however this did not happen as his contract was not confirmed.

25. On further cross-examination RW1 confirmed there was a meeting between the Respondent herein and the Claimant to discuss his performance and it was agreed that the Claimant be given a chance to improve his performance. She further confirmed that the Claimant was terminated on 18/9/2014 and that he was given 1 month notice as provided by his Contract of employment.

26. RW1 further confirmed that the Claimant was paid all her dues at the time of his separation. She further stated that she had no records to confirm the issue of leave and confirmed that the Claimant did not go on leave for 1 year.

27. On re-examination, RW1 insisted that the Claimant's contract was a fixed term contract that was renewed. She further confirmed that the Claimant's performance was not satisfactory.

28. RW1 urged this Court to dismiss the Claim as prayed.

29. There are no submissions on record filed by the parties hereto.

30. I have examined all evidence on record from both Parties. The Claimant was employed by the Respondent on 1/8/2013. The contract was open ended. The Claimant was to serve 6 months' probation before continuation in employment which period in this case was to end on 1/2/2014. At the end of this probation period, there is no indication that the Respondent communicated to the Claimant that the probation period was not being extended due to non-performance.

31. Section 42(2) of Employment Act states as follows:-

**(2) "A probationary period shall not be more than six months but it may be extended for a further period of not more than six months with the agreement of the employee".**

32. From this Section, probation period should be 6 months and where there is an extension, this should be in writing and in consultation with the employee.

33. The Claimant was never informed that his probation period had been extended for any reason. It is therefore assumed that the probation period ended in 1/2/2014.

34. The Claimant was thereafter terminated on 18/9/2014 and at this time, he was no longer on probation and therefore could only be terminated with valid reasons and after being subjected to a disciplinary hearing as envisaged under Section 41 of Employment Act.

35. The Claimant was never accorded any hearing and I therefore find that he was terminated unfairly without adherence to the law as envisaged under Section 42(2) of Employment Act.

36. In terms of remedies, I find for the Claimant and I award him as follows:-

**1. 12 months salary as compensation for the unlawful and unfair termination =  $12 \times 121,275.42 = 1,455,309/=$**

**2. Leave of 40 days =  $40/30 \times 121,275.42 = 161,700.56$**

**TOTAL 1,617,009.56**

**3. The Respondent will issue the Claimant with a certificate of service,**

**4. The Respondent will pay costs of this suit plus interest at Court rates with effect from the date of this judgement.**

**Dated and delivered in open Court this 1<sup>st</sup> day of October, 2019.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Cheruiyot holding brief Otongo for Claimant – Present

Miss Muma holding brief Wetende for Respondent