



**REPUBLIC OF KENYA**

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

**CAUSE NO. 1782 OF 2015**

*(Before Hon. Justice Mathews N. Nduma)*

**HUDSON NYAKUNDI.....CLAIMANT**

**VERSUS**

**TRIDENT PLUMBER LIMITED.....RESPONDENT**

**JUDGMENT**

1. The suit was filed on 6<sup>th</sup> October 2015 seeking maximum compensation for unlawful and unfair termination and payment of terminal benefits including unremitted NSSF, NHIF and PAYE deductions in the sum of Kshs. 28,854 and one month salary in lieu of notice.
  2. The claimant was employed as an ungraded Artisan from 5<sup>th</sup> January 2014 to 25<sup>th</sup> November 2015. The contract was for a fixed term period subject to renewal upon application.
  3. The respondent summarily dismissed the claimant by a letter dated 15<sup>th</sup> September 2015. The letter contained two reasons being:
    - (i) Theft of company material and client supplied item and
    - (ii) Failure to receive and respond to a request to show cause.
- The letter referred to a memo dated 8<sup>th</sup> September 2015.
4. The claimant testified that at the time of dismissal he earned Kshs. 14,500. That he worked diligently until the date of dismissal. The claimant states that he was falsely accused of theft of company materials. The claimant stated further that the respondent did not say what material the claimant had stolen and from where. That the claimant had no opportunity to defend himself. The claimant denied that he had been requested to show cause.
  5. The claimant reported the dispute to the Ministry of Labour upon which the respondent offered to pay the claimant Kshs. 29,489.75 as terminal benefits. The claimant rejected the amount since same was inadequate hence the suit. The claimant prays to be awarded as prayed.
  6. The respondent entered appearance and filed a memorandum of defence. However the respondent did not turn up for the hearing on 5<sup>th</sup> April 2019 despite service of hearing notice during the service week held at E&LRC Nairobi.
  7. The suit is therefore undefended and the testimony by the claimant is uncontroverted. The claimant has demonstrated that he had served the respondent diligently and was summarily dismissed without a valid reason and without getting an opportunity to explain himself. The claimant has proved in terms of *Section 47(5)* that the summary dismissal was wrongful. The respondent has failed to discharge the onus placed on it in terms of *Sections 36, 41, 43 and 47 of the Employment act, 2007* by justifying the summary dismissal.
  8. Accordingly, the summary dismissal was wrongful and unfair in violation *Section 45(1) and (2) of the Act*.
  9. The claimant is entitled to compensation in terms of *Section 49(1) (c) and (4) of the Act*.
  10. In this respect, the claimant had two months left to complete his fixed term contract. The claimant was willing to continue working. It has not been shown that the claimant contributed to the dismissal. The claimant was not given notice nor paid in lieu of notice. The claimant was not paid terminal benefits and was not compensated for the job loss. The claimant suffered loss and damage.

11. The court awards the claimant the equivalent of two (2) months salary in compensation for the unlawful and unfair dismissal.
12. The court further awards the claimant one month salary in lieu of notice. The claimant has shown that the respondent deducted NSSF and NHIF dues from his salary but did not remit the same. The court awards the claimant Kshs. 18,900 in respect of the two.
13. The issue of KRA remission has not been adequately canvassed and we make no finding in respect thereof.
14. In the final analysis judgment is entered in favour of the claimant as against the defendant as follows:
  - (i) Two months salary in compensation in the sum of Kshs. 29,000.
  - (ii) One month salary in lieu of notice Kshs. 14,500.
  - (iii) Refund of NHIF and NSSF not remitted Kshs. 18,900.

**Total award Kshs. 62,400**

  - (iv) Interest at court rates from date of filing suit till payment in full.
  - (v) Costs of the suit.

**Dated and Signed in Kisumu this 14<sup>th</sup> day of November, 2019**

**Mathews N. Nduma**

**Judge**

**Delivered and signed in Nairobi this 22<sup>nd</sup> day of November, 2019**

**Maureen Onyango**

**Judge**

**Appearances**

Mr. Nyakundi for claimant.

Amin and Company Advocates for the Respondent.

Chrispo – Court Clerk