



**REPUBLIC OF KENYA**

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

**CAUSE NO. 1484 OF 2016**

**DAVID OKOTH OUMA.....CLAIMANT**

**VERSUS**

**CIVICON LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 1st November, 2019)

**JUDGMENT**

The memorandum of claim was filed on 29.07.2016 through Samuel Nyambane & Company Advocates. The claimant prayed for judgment against the respondent for:

a) A declaration that the respondent's action of sacking the claimant is illegal and unlawful and the claimant is entitled to severance pay, terminal benefits, 1 month in lieu of notice, leave, salary, underpayments, transport allowance and gratuity amounting to Kshs. 326, 486.15 being:

- i. One month salary in lieu of notice Kshs.20, 704.00.
- ii. Service pay for each year served Kshs.23, 889.23.
- iii. Leave days for years served Kshs.33, 444.92.
- iv. General damages for wrongful termination Kshs.248, 448.00.

b) General damages for wrongful termination.

c) Costs of the suit and interest.

d) Any other relief that the Honourable Court may deem fit and just to grant.

The claimant's case is that the respondent employed him from 02.09.2014 to 30.06.2015 when, without reasonable cause or justification the respondent unilaterally sacked him from his gainful employment.

The summons to enter appearance was served upon the respondent together with the memorandum of claim on 05.08.2016. The respondent failed to enter appearance or to file a defence. Despite service, the respondent failed to attend Court including on directions and hearing of the suit.

The claimant testified that he was dismissed on 30.06.2015 without a reason. In so far as no reason was advanced and no allegations of poor performance, ill health or misconduct were levelled, the Court returns that the claimant had no legitimate expectation for a notice and a hearing as per section 41 of the Employment Act, 2007. The termination was under section 35 of the Act and the claimant is awarded **Kshs. 20, 704.00** as prayed for being one month pay in lieu of termination notice.

The claimant had not served for a full year and the other prayers as made are declined in view of the provisions of sections 28, 35, and 49 of the Act. In particular the Court returns that leave and service pay had not been earned and the termination was not unfair.

The claimant is awarded **Kshs.10, 000.00** partial costs of the undefended suit.

In conclusion judgment is hereby entered for the claimant against the respondent for payment of **Kshs.30, 704.00** by 01.12.2019 failing

interest to be payable thereon from the date of this judgment till full payment.

**Signed, dated and delivered in court at Nairobi this Friday, 1st November, 2019.**

**BYRAM ONGAYA**

**JUDGE**