



**REPUBLIC OF KENYA**

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

**KENYA AT NAIROBI**

**CAUSE 1064 OF 2013**

**ERNEST NECHESA OBOK.....CLAIMANT**

**VERSUS**

**LIDDOS CLUB LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The claimant averred that between September, 2007 and 25<sup>th</sup> October, 2012 he was employed by the respondent as a cleaner at monthly salary of Kshs 8,000/=. On 25<sup>th</sup> October, 2012 the respondent's secretary sent him to buy a piece of soap and as he was leaving he pushed back the door as it could only be closed from the inside. On being asked by the respondent's manager, he explained that the door could only be closed from inside hence it was impossible for him to close the said door while outside a fact the respondent was aware of.
2. The claimant further averred that the respondent's manager then directed the secretary to immediately deduct Kshs 2000 from the claimant's salary for the incident. The manager further told him that if he did not accept the deduction he would be dismissed immediately. He refused the deductions and was dismissed. Upon dismissal he was advised to collect his final dues at the end of the month but when he went for them at the end of the month he was never paid. He reported the dispute to the Labour Office but the respondent refused to co-operate in resolving the dispute.
3. The respondent on its part averred that the claimant was never its employee. According to the respondent, on 22<sup>nd</sup> February, 2012 the claimant approached the respondent and offered to be collecting garbage and unwanted trash from the respondent's club for disposal. This happened until 30<sup>th</sup> October, 2012.
4. The respondent informed and stopped the claimants services of garbage collection due to claimants incompetence and due to the fact that the respondent had been approached with a cheaper monthly offer. The respondent therefore averred that there was no employer-employee relationship between the claimant and the respondent.
5. At the hearing the respondent chose not to call evidence. Only the claimant testified. The claimant in his evidence in chief repeated most of the averments in the statement of claim and added that he worked for the month of October and that he was not contributing to NSSF.
6. In cross-examination he stated that he used to report to work at 5:00 p.m. and leave at 5:00 a.m. According to him he was never issued with a letter of appointment. He was informed by a Mr Tony that his dues would be sent to Co-operative Bank but this was not done.
7. In claims for unfair termination of employment the employee is obliged to prove that unfair termination took place while the employer has the duty to show that there existed valid reasons for terminating an employee's services. The claimant herein has stated that his supervisor wanted to deduct Kshs 2000 from his salary as punishment for leaving the clubs door open. He did not agree to the deduction and was therefore summarily dismissed. This information was given to the secretary called Beth to implement.
8. The respondent on its part claimed was not its employee but someone who had approached them to be collecting garbage from the club daily for disposal.
9. In his submissions before the court the respondent though did not plead so, stated that the claimant was being paid 350/= per day for his services. Statements in pleadings are not evidence. They remain averments which must be backed by supporting documents. The respondent failed to call any oral evidence or attach any document in support. This left the claimant's assertions uncontested.
10. A dismissal from employment must be for valid and justifiable reasons and in dismissing an employee or terminating his services, due process as provided under the Employment Act must be followed. The burden of proving that these requirements of the law are met is on the employer. This burden was not discharged by the respondent in this particular case.

11. The court therefore enters judgement in favour of the claimant as follows:

	Kshs.
a. One month salary in lieu of notice	8,000
b. Service pay at 15 days for each completed year of service	20,000
c. Unpaid salary for October, 2016	8,000
d. Unpaid house allowance	13,000
e. Payments in lieu of untaken leave for the period worked	40,000
f. Seven months salary for unfair termination of services	<u>56,000</u>

**145,000**

12. Items (a), (b), (c), (d) and (f) shall be subject to statutory deductions and taxes.

13. It is so ordered.

**Dated at Nairobi this 23<sup>rd</sup> day of February, 2018**

**Abuodha J. N.**

**Judge**

**Delivered this 23<sup>rd</sup> of February, 2018**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the Claimant

.....for the Respondent.

**Abuodha J. N.**

**Judge**