



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO. 1707 OF 2015**

**VINCENT IKUSYA KIMETU.....CLAIMANT**

**VERSUS**

**JOHN KANYUTHIA MUTUNGA**

**t/a SKYLINE SCHOOL.....1<sup>st</sup> RESPONDENT**

**SHEILA KAREA MUTEGI**

**t/a SKYLINE SCHOOL.....2<sup>nd</sup> RESPONDENT**

**JUDGMENT**

1. On 24 September 2015, Vincent Ikusya Kimetu (Claimant) instituted proceedings against John Kanyuthia Mutunga and Sheila Karea Mutege t/a Skyline School (Respondents) alleging Unfair and *unlawful termination of employment and failure to pay terminal dues*.
2. The firm of Were & Oonge, Advocates filed a *Notice of Appointment of Advocates* on 18 January 2016.
3. On 20 January 2016, the Court granted the Respondent 14 days to file a Response. The order was not complied with.
4. On 19 July 2017, the Claimant served a hearing notice upon the Respondent's advocate.
5. When the Cause up for hearing on 15 February 2018, the Court declined a request for adjournment by the Respondent because they had not filed a Response more than 2 years after the Court granted leave.
6. The Cause therefore proceeded as an undefended Cause (formal proof) and the Claimant filed written submissions on 28 February 2018.
7. The Claimant testified that he was employed as a gardener by the Respondents in July 2013 and served until July 2014. He was not issued with a written contract.
8. On the circumstances of separation, the Claimant testified that he got injured in the course of work and was admitted in hospital for about 3 weeks.
9. However, after he resumed duty, he requested for money to return to the hospital for a review but the Respondents declined and the 1<sup>st</sup> Respondent sent him to the 2<sup>nd</sup> Respondent.

10. According to the Claimant, the Respondents tossed him from one to the other until he was ultimately informed by the 1<sup>st</sup> Respondent around 30 May 2014 that his services were no longer required, as he was a liability to the school. He cleared and left.

11. On why the termination was unfair, the Claimant stated that he was not given notice of termination.

12. The Claimant admitted that he was provided with housing but asserted that he was not granted annual leave, but did not work during school holidays.

13. He further stated that he worked even on Sundays without overtime pay.

14. The Claimant produced exhibits including pay slips.

#### **Whether termination was unfair**

15. Pursuant to section 35(1)(c) of the Employment Act, 2007, the Claimant should have been given a month's notice of termination.

16. Because none was given, the Court finds that the Claimant has demonstrated that there was unfair termination of employment as contemplated by section 47(5) of the Act.

#### **Annual leave**

17. Considering the school calendar and the admission by the Claimant that he took offs during school holidays, the Court finds this head of claim not proved.

#### **Wages for June 2014**

18. The evidence on record is that separation was around 30 May 2014. Wages for June 2014 were therefore not due.

#### **House allowance**

19. The Claimant admitted that he was provided with housing. Consequently he was not entitled to house allowance.

#### **Overtime**

20. The Claimant did not lay evidential basis as to the contractually agreed or prescribed minimum working hours within the sector the Respondents operated.

21. The head of claim was not proved.

#### **Appropriate remedies**

#### **Wages for June 2014**

22. The contract having been terminated in May 2014, this relief is untenable.

#### **Salary in lieu of Notice**

23. The Claimant is entitled to salary in lieu of notice as he was not given notice.

#### **Leave**

24. No basis for the relief was established and it is declined.

### **House allowance**

25. The Claimant was housed. The relief is not available.

### **Overtime**

26. The head of claim was not proved and the relief is declined.

### **Compensation**

27. The Claimant served for about a year. He was also dismissed after an injury in the work place which has diminished his prospects.

28. In view of these factors, the Court is of the view that the equivalent of 4 months' gross wages would be appropriate and fair.

### **Certificate of Service**

29. A Certificate of Service is a statutory right. The Respondents should issue one to the Claimant within 14 days.

### **Conclusion and Orders**

30. The Court finds and holds that the termination of the Claimant's contract was unfair and awards him and orders the Respondents to pay him

(a) Pay in lieu of notice	Kshs 15,000/-
(b) Compensation	Kshs 60,000/-
<b>TOTAL</b>	<b>Kshs 75,000/-</b>

31. Claimant to have costs.

**Delivered, dated and signed in Nairobi on this 9<sup>th</sup> day of March 2018.**

**Radido Stephen**

**Judge**

### **Appearances**

For Claimant Mr. Kimeru instructed by Job Kimeru Advocates Co.

For Respondent Were & Oonge Advocates

Court Assistant Lindsey