



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 919 OF 2014**

*(Before Hon. Justice Mathews Nderi Nduma)*

**WYCLIFFE RAWAGO AYIEKO.....CLAIMANT**

**-Versus-**

**JUBA EXPRESS LIMITED.....RESPONDENT**

**JUDGMENT**

By an amended statement of claim dated 30<sup>th</sup> March 2015, the claimant seeks compensation for unlawful termination of employment and terminal benefits in the sum of Kshs.239,687.75/= set out in paragraph 13 of the statement of claim.

The claim is opposed vide a statement of defence filed on 7<sup>th</sup> August 2014 with a counter claim for unreturned company uniform at estimated value of Kshs.15,000/=.

The claimant testified under oath in support of the claim and RW1 Patrick Ouma Adero, a Director of the respondent testified in opposition to the claim.

The issues in dispute are: -

- i. Whether the termination of the employment of the claimant was lawful and fair.
- ii. Whether the counterclaim has been sufficiently proved.
- iii. Whether the claimant is entitled to the itemised reliefs.

**Issue i**

It is not in dispute that the claimant was employed by the respondent on 29<sup>th</sup> May 2013 and worked for the respondent for a period of eight months until 13<sup>th</sup> March 2014.

On 13<sup>th</sup> March 2014, when his employment was terminated by a letter of same date. The claimant had been served a letter of suspension dated 31<sup>st</sup> January 2014 following allegations of conflict of interest in that he was offering courier service to a staff of the Institute of Kenya Engineers, a client of the respondent and was therefore in conflict of interest with the employer.

The claimant denies the allegation and says he was falsely accused and his employment terminated without a hearing contrary to law.

**Determination**

The claimant was suspended from work by a letter dated 31<sup>st</sup> January 2014 pending investigation. The letter did not ask him to show cause.

The next letter the claimant received was one terminating his employment dated 13<sup>th</sup> March 2014. The letter states that the claimant was found guilty of the offence he was charged with and his employment had therefore been terminated.

RW1 contradicted the contents of the letter of termination in his testimony before court in material respects in that he told the court that the claimant's employment was terminated for absconding from duty since he did not return to work upon expiry of two weeks suspension.

No letter recalling the claimant back to work or to attend a disciplinary hearing was produced. The court is left with no alternative but to find that the claimant was suspended from work pending investigations and his employment was terminated without affording him any opportunity to show cause in writing or to attend a hearing to explain why his employment ought not to be terminated.

The evidence by the respondent is inconsistent and RW1 lacks credibility in the circumstances of the case.

The termination was not for a valid reason and did not follow a fair procedure in contravention of Sections 41, 43 & 45 of the Employment Act, 2007. The claimant is entitled to compensation in terms of Section 49 (1) (c) as read with subsection 49 (4) of the Act.

In this regard, the claimant had only served for eight (8) months and had good prospects of continued service. The claimant was not paid any terminal benefits upon termination. There is no credible evidence to prove any contribution to the termination by the claimant.

The court awards the claimant four (4) months salary in compensation for the unlawful and unfair termination of employment.

## **Issue ii**

The respondent counterclaims Kshs.15,000 being the value of unreturned uniform by the claimant. The claimant admitted in a letter dated 22<sup>nd</sup> March 2014 produced by him that he had not returned the uniform. The court finds that Kshs.15,000 is a reasonable estimated value of the unreturned goods and awards the respondent accordingly.

## **Terminal Benefits**

### **1. Notice Pay**

The claimant's employment was terminated without notice and is awarded one month's salary in lieu of notice in the sum of Kshs.12,200/=.

### **2. Annual Leave**

The claimant had not taken leave during the eight (8) months he worked and he is entitled to one month's salary in lieu of leave in the sum of Kshs.12,200/=.

### **3. Underpayment**

The claimant was employed as a Courier/Messenger. The claimant did not adduce any evidence to prove that he was underpaid. He who alleges must prove in terms of Sections 106, 107, 108 and 109 of the Evidence Act, Cap 80 of the Laws of Kenya. The claimant has failed to discharge the onus on a balance of probabilities. The claim for underpayments is dismissed.

In the final analysis, judgment is entered in favour of the claimant as against the respondent as follows: -

- a. Four (4) months' salary in compensation in the sum of Kshs.48,800/=.
- b. One month's salary in lieu of notice Kshs.12,200/=.
- c. One month's salary in lieu of leave Kshs.12,200/=.
- d. Less Kshs.15,000 awarded to the respondent.

**Total award Kshs.58,200/=.**

- e. Interest at court rates from date of judgment till payment in full.
- f. Costs to abide the outcome.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 20<sup>TH</sup> DAY OF APRIL 2018**

**MATHEWS NDERI NDUMA**

**JUDGE**

**Appearance:**

Mr Gomba for claimant

Mr Kaka for respondent

Chrispo: Court Clerk