



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT MOMBASA**  
**CAUSE NO 56 OF 2017**  
**MANASSEH OCHMON OMUMAH.....CLAIMANT**  
**VS**  
**COAST SECURITY SERVICES LIMITED.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. In this claim, the Claimant, Manasseh Ochmon Omumah seeks compensation for unfair termination of employment. The claim is documented by a Memorandum of Claim dated 17<sup>th</sup> January 2017 and filed in court on 20<sup>th</sup> January 2017. The Respondent filed a Response on 24<sup>th</sup> February 2017.
2. The matter came up for hearing on 12<sup>th</sup> February 2018, when the Claimant testified. The Respondent called Samuel Mdachi Gona, Mwangoma Mundu Dena, Ishak Mohamed Kasim and Oche Ramadhan Yunus.

**The Claimant's Case**

3. The Claimant states that he was employed by the Respondent as a gardener at a monthly salary of Ksh. 11,500 from 29<sup>th</sup> October 2009 until 15<sup>th</sup> July 2016. He was deployed at the home of the Respondent's Director. The Claimant avers that apart from performing the duties of a gardener, he doubled up as a dog handler for which he was not compensated.
4. On 15<sup>th</sup> July 2016, the Claimant reported for duty but was denied entry at the gate. He went to the Respondent's office where he was told to go home and wait for further information within three days. When he went back he was told that his employment had been terminated. He was issued with a cheque of Kshs. 40,520 but was not issued with any details of the payment.
5. It is the Claimant's case that the termination of his employment was unlawful and unfair. He therefore claims the following:

- a. One month's salary in lieu of notice.....Kshs. 11,500
- b. Dog training allowance for 5 years @ 3,000 per month.....180,000
- c. Damages for unfair termination (12 months' salary).....138,000
- d. Costs plus interest

**The Respondent's Case**

6. In its Response dated 24<sup>th</sup> February 2017 and filed in court on even date, the Respondent admits having employed the Claimant as a gardener cum dog handler. The Respondent however disputes that the Claimant was entitled to a dog handling allowance.
7. The Respondent states that the Claimant was summarily dismissed according to procedure upon which he was paid all his outstanding dues.

**Findings and Determination**

8. There are two (2) issues for determination in this case:

- a. Whether the Claimant's dismissal was lawful and fair;
- b. Whether the Claimant is entitled to the remedies sought.

### **The Dismissal**

9. According to the Respondent, the Claimant was dismissed by letter dated 16<sup>th</sup> July 2016 stating as follows:

“Dear Sir,

**RE: ABSCONDING DUTY ON 14<sup>TH</sup> JULY 2016.**

I write to inform you that on the above date at 11.00 am you left your assignment and went to attend to your personal errands without taking permission from our boss Mr. Ishak. This is gross misconduct.

You have on several occasions neglected your work when you take prolonged leave or off thereby inconvenience (sic) other workers to take care of your job.

You have been warned many times verbally to rectify your behavior but you refuse to heed the request.

By way of this letter you are hereby summarily dismissed.

Thank you.

Yours sincerely,

**FOR COAST SECURITY SERVICE LTD**

(Signed)

**Oche Ramadhan Yunus**

**Operation Manager**”

10. This letter accuses the Claimant of absconding duty on 14<sup>th</sup> July 2016. The Respondent's first three witnesses, Samuel Mdachi Gona, Mwangoma Mundu Dena and Ishak Mohamed Kasim consistently testified that on the said date, the Claimant left his place of work in the morning and did not return. The three further told the Court that the Claimant had formed the habit of leaving his place of work without permission and had failed to heed verbal warnings issued to him.

11. When the Respondent's Director, Ishak Mohamed Kasim at whose home the Claimant was deployed came back in the evening, he found the dogs fighting, apparently because they had not been fed due to the Claimant's absence. On making inquiry from the Claimant's colleagues, Gona and Dena, Kasim learnt that the Claimant had left his place of work without permission. This is what triggered the Claimant's dismissal.

12. The question before the Court then is whether the Respondent has established a valid reason for dismissing the Claimant as required under Sections 43 and 44 of the Employment Act, 2007. The Claimant himself admitted leaving his place of employment on 14<sup>th</sup> July 2016 but claimed that he had sought permission from his colleague, Samuel Mdachi Gona. Gona denied the Claimant's assertion in this regard and went further to testify that he had no mandate to give the Claimant permission to be away.

13. It is now settled in law that in determining whether an employer had a valid reason to bring an employment relationship to an end, the Court does not seek to supplant the employer's decision with its own. All the Court asks is whether the employer acted reasonably in the circumstances of case and if the answer is yes, then the Court will not interfere with the decision made (see ***Rashid Jeneby v Prime Bank Limited [2015] eKLR***).

14. In this case, it is evident that the Claimant left his work unattended without permission and the Court must therefore find that the Respondent had a valid reason to end his employment. Having said that, the next question is whether, in effecting the dismissal, the Respondent observed due procedure.

15. The Court was referred to the decision in ***Mary Chemweno Kiptui v Kenya Pipeline Company Limited [2014] eKLR*** where it was confirmed that even in cases of gross misconduct the procedural fairness requirements set out under Section 41 of the Employment Act are mandatory. From the evidence on record, the Claimant was not availed the disciplinary procedure therein and on that ground alone, I find the termination of his employment procedurally unfair.

### **Remedies**

16. Arising from the foregoing findings, I award the Claimant three (3) months' salary in compensation. In arriving at this award I have taken into account the Claimant's length of service tempered with the conduct of the parties.

17. From the evidence on record, the Claimant was paid one month's salary in lieu of notice. The claim thereon is therefore without basis and is dismissed. The claim for dog handling allowance was not proved and is also dismissed.

18. Finally, I enter judgment in favour of the Claimant in the sum of Kshs. 34,500 being three (3) months' salary in compensation for unfair termination of employment.

19. This amount will attract interest at court rates from the date of judgment until payment in full.

20. The Claimant will have the costs of the case.

21. Orders accordingly.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 18<sup>TH</sup> DAY OF MAY 2018**

**LINNET NDOLO**

**JUDGE**

Appearance:

Miss Mbogo for the Claimant

Miss Mwainzi for the Respondent