

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.1017 OF 2017

MAURICE LIBWEGE BUKASA.....CLAIMANT

- VERSUS -

NOBLE GASES INTERNATIONAL LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 22nd June, 2018)

JUDGMENT

The respondent employed the claimant as a loader effective November 2013. The claimant's case is that on 04.04.2017 he was irregularly terminated without notice or hearing and on account of gross misconduct. At that time his monthly pay was Kshs. 10, 500.00.

The claimant filed the memorandum of claim on 31.05.2017 through Njuru & Company Advocates praying for:

- a) A declaration that the claimant's termination of employment was wrongful and unfair.
- b) The sum of Kshs. 169, 615.00 being Kshs10, 500.00 notice pay; Kshs.1, 615.00 4 days worked in April 2017; service pay for 3 years worked; and 12 months' pay in compensation Kshs.126, 000.00.

The respondent was served but did not enter appearance or file a response or attend the hearing. The claimant testified to support his case. The Court makes findings as follows:

- a) The claimant has confirmed by evidence that the termination was without notice and a hearing as per section 41 of the Employment Act, 2007. He denied the reason for termination set out in the termination letter dated 4.04.2017 being alleged absenteeism and disobeying instructions. The respondent offered no evidence to establish the reasons for termination as envisaged in sections 43 and 45 of the Employment Act, 2007. The Court returns that the claimant has established that the termination was unfair. The Court finds that he had served with dedication and he did not contribute to the termination and he is entitled to the 12 months' pay in compensation as well as the notice pay and 4 days worked without pay.
- b) The claimant being a member of the NSSF, he is not entitled to service pay as per section 35(6) of the Act.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- 1) The respondent to pay the claimant **Kshs.138, 115.00** by 01.08.2018 failing interest at Court rates to be payable thereon from the date of judgement till full payment.
- 2) The respondent to pay costs of the suit.

Signed, dated and delivered in court at Nairobi this Friday 22nd June, 2018.

BYRAM ONGAYA

JUDGE