



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CASE NO. 31 OF 2017**

**DAMARIS KATUNGWA MASILA.....CLAIMANT**

**VERSUS**

**FRESH SQUEEZE LIMITED.....RESPONDENT**

**JUDGMENT**

1. The Claimant sued the Respondent stating that she was employed in November 2010 as a general labourer earning 11,000/-. She worked for 4 years till her dismissal on 14<sup>th</sup> July 2014 without cause. She averred that she was not given notice prior to dismissal. She thus sought the one month notice as well as the sums due for the unlawful termination.

2. The matter proceeded undefended. She testified that she was not notified of the intention to terminate her services. She stated that she fell ill and therefore was dismissed on account of her infirmity. The law makes provision for procedural fairness under Section 41 of the Employment Act. This section requires that the employer considers the representations of the employee prior to dismissal for incapacity so as to comply with the rules of natural justice as provided for under Section 41(2) of the Act. The provisions of Section 41 of the Employment Act provide as follows:-

*41.(1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.*

*(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.*

3. The Claimant was not afforded the safeguards under the law and is therefore entitled to claim as she did that her termination was unfair. I hold that her dismissal was unlawful and unfair in the circumstances and enter judgment for her as follows:-

- i. Kshs. 11,000/- being notice;
- ii. Kshs. 44,000/- being compensation for 4 months for the unlawful dismissal;
- iii. Interest on the sums in i) and ii) above at court rates from date of judgment till payment in full.

It is so ordered.

**Dated and delivered at Nairobi this 19<sup>th</sup> day of October 2018**

**Nzioki wa Makau**

**JUDGE**