



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**  
**KENYA AT NAIROBI**  
**CAUSE NO 1065 OF 2014**

**MARIJIANA MUTISO MWASYA.....CLAIMANT**

**VERSUS**

**PANESARS KENYA LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The claimant pleaded that he was in July 1999 employed by the respondent at a monthly salary of Kshs 46,000 per month. He worked for the respondent continuously until 17<sup>th</sup> June, 2013 when the respondent terminated his services when he requested for salary increment. According to the claimant, he asked for increment on several occasions but the respondent refused. He further pleaded that he never went for his annual leave during the period he worked and further that the respondent hence paid him house allowance.

2. The respondent on its part denied the claimant's allegations and stated that over the years it engaged the claimant on part time basis as an independent contractor discharging his duties independent of any direct control from the respondent. According to the respondent, the claimant was a piece worker paid on completion as per the units of products delivered to the respondent. At the trial only the claimant gave oral evidence. The respondent's counsel informed the court that he was not calling any witness.

3. The claimant additionally stated that his work was designing and carving and that he worked continuously. According to him, he left on 17<sup>th</sup> June, 2013 when he asked for a pay rise and was accused of inciting others. He was asked to see the Human Resource Officer who informed him that his services had been terminated. According to him, he was not taken through any disciplinary hearing before dismissal. The respondent refused his plea. He further stated that the respondent did not pay him for the 12 days worked and that some Kshs 15,000 was sent to the Labour Officer for him after he reported the matter there.

4. In cross-examination he stated that the payslip was from the respondent and that the tool box he used was his and further that the respondent also gave him some tools. He further stated that the respondent only remitted his NSSF dues for two months. The respondent in this matter denied that there existed any employer-employee relationship with the claimant yet did not raise the issue as a matter of law going to the jurisdiction of the court. It was in the circumstances of the plea that there was no employer-employee relationship, it is important that the respondent provide either documentary evidence of the relationship as an independent contractor or lead some oral evidence in court to assist the court in establishing the nature of the relationship.

5. The Ministry of labour got involved in the matter and summoned the respondent. The letter summoning the respondent clearly stated what the claimant's complaint was. That is to say; termination of services without any lawful cause. The respondent neither in their response to the claim nor through any correspondence, raised the issue of claimant being an independent contractor. The respondent in fact went ahead and tried to solve the matter by paying some Kshs 15,000/= to the Labour Office which was rejected by the claimant.

6. The court therefore deems the claimant to have been the respondent's employee. From the record, there was no evidence that any reason was given for terminating the claimant's service. Further there was nothing on record to show the claimant was taken through any disciplinary process.

7. The burden of proof of reasons for termination of employment as well as fairness of procedure for the termination is placed upon the employer. In this particular case the respondent never filed any supporting documents nor called any witnesses. The claimant's claim therefore remained uncontroverted.

8. In the circumstances, the court awards the claimant as follows:

- a. One month's salary in lieu of notice 46,000

b. Seven months' salary as compensation for

unfair termination of service 322,000

**368,000**

c. Costs

9. Items (a) and (b) shall be subject to taxes and statutory deductions.

10. It is ordered.

Dated at Nairobi this 30<sup>th</sup> day of November, 2018

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 30<sup>th</sup> day of November, 2018**

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.