



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 82 OF 2013**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 20<sup>th</sup> December, 2018)**

**SAMUEL EYANAE LOMORU.....CLAIMANT**

**VERSUS**

**MARULA ESTATES LIMITED.....RESPONDENT**

**JUDGMENT**

1. The Claimant filed his Memorandum of Claim on 23.1.2013 in person alleging unlawful, unprocedural and unfair termination of his employment.
2. The Claimant's case is that he was employed by the Respondent from November 2002 as a Truck Driver up to November 2011. He avers that he served the Respondent diligently until his resignation. He was earning Kshs.9,187/= per month.
3. He avers that he never went on leave all the time he served the Respondent and house allowance was never paid. He seeks to be paid his terminal dues, leave dues, leave allowance and off days.
4. In cross-examination, the Claimant denied ever signing any warning letters. He avers that he worked from Monday to Sunday and was only paid overtime of 2 hours even if he worked longer. He denied he absconded duty.
5. The Respondent on their part filed their Memorandum of Response on 13/2/2013 through Mburu F.I. & Company Advocates. They aver that the Claimant absconded duty on 16<sup>th</sup> November 2011 and then never appeared again.
6. They also aver that the Claimant was housed in Respondent housing estate at house No.46 and is therefore not entitled to house allowance. They deny forcing the Claimant to resign.
7. The parties further filed their respective submissions, which I have considered. I have noted from the Claimant's own evidence that he resigned from duty citing failure by Respondent to give him leave. He did not even show by evidence that he applied and was denied the said leave. He cannot therefore claim damages for unfair termination.
8. On the rest of the claim, the Claimant avers that he was not paid his leave days, overtime and house allowance.
9. The Respondents aver that they paid him all these and even housed him in their staff quarters. The Claimant even admitted in Court that he was staying in the Respondent's company house.
10. In the circumstances the claim for house allowance cannot stand. He was shown leave passes and he also agreed he went on leave. Nothing remains therefore of the claim. The claim is therefore dismissed accordingly. There will be no order as to costs.

**Dated and delivered in open Court this 20<sup>th</sup> day of December, 2018.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Ashiruma holding brief Enonda for Claimant – Present

Makungu for Respondent – Present