



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1345 OF 2012**

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

**WILLIAM OLANDO.....CLAIMANT**

**-VERSUS-**

**MANPOWER NETWORKS LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The Claimant filed suit vide a Memorandum of Claim dated 7<sup>th</sup> August 2012, amended on 5<sup>th</sup> April, 2016, seeking damages for unfair dismissal and payment of terminal benefits. He avers that he was employed by the Respondent on 1<sup>st</sup> April, 2011 as a Packer at Kshs. 8.5 per tonne amounting to Kshs. 12,000-13,000 per month.
2. That he served the Respondent with loyalty and diligence until 2<sup>nd</sup> February, 2012 when the Respondent unfairly and wrongfully terminated his services. He prays for the claim to be allowed as contained in the Memorandum of Claim.
3. The Respondent filed their reply to the Memorandum of Claim wherein they admit the employment relationship but deny that the Claimant was wrongfully and unfairly dismissed and that he is entitled to the reliefs sought.

**Evidence**

4. The Claimant in evidence stated that on 2<sup>nd</sup> February, 2012, he was off duty and he was informed by his colleagues that he had been dismissed. He stated that his friends informed him that their supervisor by the name Mwaura called them under a tree and called out names and he said that those who would not hear their names were not to report back to work.
5. That on the next day he went to the Respondent to demand his terminal dues but the Respondent declined to remit the same. That he was not given any notice before termination and neither was he given a hearing. He demands to be paid his terminal dues and damages.
6. The Respondent's witness one Moses Wakaba Waitthaka, working as the Respondent's site Manager testified that he had records of the Claimant who was employed as a Packer whose duties involved manual stacking of cement bags after being loaded into lorries. That mishandling of the cement bags would directly be attributable to those who manually handled the bags after they were meticulously

accounted for at the store and before they left the loading bay.

7. That once the Respondent received complaints of theft of bags, investigations would begin and the team responsible would be given a chance to explain to management staff. If no satisfactory reason was given they would be suspended to pave way for investigations and if substantial reason was found the labourers would be summarily dismissed. He avers that the benefits claimed by the Claimant are not contained in the Contract of employment and the same should not be allowed.

8. In cross-examination he admitted that the warning letter issued to the Claimant concerned wearing of ear plugs and nothing to do with mixing of cement bags.

### **Submissions**

9. It is submitted on behalf of the Claimant that Section 41 of the Employment Act required the Respondent before summarily dismissing the Claimant to explain to him the reason for which it was considering termination. That the Respondent was legally bound to offer the Claimant a chance to be heard and consider any representations which the Claimant had on the alleged grounds of misconduct.

10. Counsel for the Claimant also submits that none of the procedures were followed and therefore the dismissal is unfair. That as a result of the flawed dismissal process the Claimant is entitled to the prayers set out in the Claim.

11. On behalf of the Respondent it is submitted that the Claimant was terminated summarily for being negligent and committing acts of gross misconduct. It is submitted that the Respondent did issue a warning letter which the claimant did not heed leading to his eventual summary dismissal.

12. That the Claimant is not entitled to the reliefs sought for the reason that the termination was regular and that he was an independent contractor paid on a piece work basis as indicated on his employment contract. That the Claimant is not entitled to service pay as the Respondent was remitting NSSF deductions on his behalf. That house allowance is not payable for the reason that the Claimant was being paid a consolidated salary at a rate of Kshs. 8.5 per tonne as a packer.

13. I have examined all evidence and submissions of the parties. I note that the Respondent's witness aver that they served the Claimant with a warning letter accusing him of mixing up of cement bags. The warning letter however refers to the Claimant failing to wear ear bunds. It is therefore apparent that the Respondent dismissed the Claimant summarily for no valid reason.

14. Section 43 of Employment Act states as follows:-

***“(1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.***

***(2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.***

15. The Respondent have however not established they had valid reasons to warrant summary dismissal of the Claimant.

16. Other than valid reasons, it is also admitted that the Respondent terminated the Claimant without any due process. The Claimant was not subjected to any disciplinary process as envisaged under Section 41 of Employment Act which states as follows:-

***“(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”.*

17. It is therefore my finding that the Claimant’s dismissal was unfair and unjustified. In terms of remedies I find for the Claimant and I award him as follows:-

*1. 1 months’ salary in lieu of notice = 12,000/=.*

*2. Unpaid house allowance = 21,600/=.*

*3. Dues not remitted to NSSF = 1,600/=.*

*4. Leave pending = 8,400/=.*

*5. 6 months’ salary as compensation for unfair dismissal = 12,000 x 6 =72,000/=.*

**Total = 115,600/=**

*6. The Respondent will pay costs of this suit plus interest at Court rates with effect from the date of this judgement.*

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**

Wanyama holding brief Maina for Respondent

Claimant – Absent