



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT MOMBASA**  
**CAUSE NUMBER 358 OF 2015**

**BETWEEN**

**TITUS KIMANTHI KISAVA..... CLAIMANT**

**VERSUS**

**MOMBASA APPARELS (EPZ) LIMITED .....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Ms. Ndinda Advocate instructed by Otieno Asewe & Company Advocates for the Claimant*

*Ms. Opolo Advocate instructed by Kituo Cha Sheria, Advocates for the Respondent*

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**JUDGMENT**

1. In his Statement of Claim filed on 28<sup>th</sup> May 2015, the Claimant states he was employed by the Respondent as a Mass Production Machinist on 26<sup>th</sup> March 2013.
2. He was injured on 30<sup>th</sup> March 2015, while in the course of performing his duties. He returned to work on 14<sup>th</sup> April 2015. The Respondent confiscated his medical documents, and dismissed him effective 14<sup>th</sup> April 2015.
3. He feels termination was unfair and unlawful. It was without cause or notice. He was not heard or given reasons for the decision. He prays for the following orders against the Respondent:-
  - a) 1 month salary in lieu of notice at Kshs. 13,431.
  - b) 24 days of annual leave for 2 years at Kshs. 24,816.
  - c) Balance of the contract period at Kshs. 40,293.
  - d) 12 months' salary in compensation for unfair termination at Kshs. 161,172.

Total .....**Kshs. 239,712.**

e) A declaration that termination was unfair.

f) Certificate of Service to issue.

g) Costs and interest.

h) Any other suitable remedy.

4. The Respondent filed its Statement of Response on 14<sup>th</sup> August 2015. It is denied that the Claimant suffered work injury. None was reported to the Respondent. He was reported to have been sick in February 2015. It was not work-related sickness. He absconded, returning to work on 14<sup>th</sup> April 2015, after the Respondent enquired into his whereabouts. He wrote on 14<sup>th</sup> April 2015 to the Respondent, explaining that he had gone away to bury his brother. He had not sought Respondent's leave to be away for any reason. The Respondent prays the Court to dismiss the Claim.

5. Parties agreed on 18<sup>th</sup> October 2016, to have the dispute considered and determined on the strength of the record.

### ***The Court Finds***

6. The Claimant wrote to the Respondent on 14<sup>th</sup> April 2015, explaining he went away to bury his brother.

7. There is no evidence from the Claimant to support his allegation that he was seriously injured on 30<sup>th</sup> March 2015, and was away on treatment.

8. His letter to the Respondent did not mention any injury, but focuses on bereavement.

9. The Respondent had valid reason to summarily dismiss the Claimant, under Section 44(4) of the Employment Act 2007.

10. The Claimant sought pardon in his letter to the Respondent.

11. There is no justification in light of this to demand notice pay, compensation or anticipated salaries. His pay slip indicated he was subscribed to the N.S.S.F. He would not merit service pay, under S. 35(6) of the Employment Act.

12. The Respondent did not avail to the Court, Claimant's annual leave record. The Claimant states he did not take annual leave for 2 years. This item is allowed.

13. Certificate of Service to issue.

14. No order on the costs and interest.

### **IN SUM IT IS ORDERED:-**

***a) Termination was fair.***

***b) Respondent shall pay to the Claimant annual leave pay at Kshs. 24,816.***

***c) Certificate of Service to issue.***

***d) No order on the costs.***

Dated and delivered at Mombasa this 31<sup>st</sup> day of March 2017.

James Rika

Judge