



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS**  
**COURT AT NAIROBI**  
**CAUSE NO. 1244 OF 2012**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 1<sup>st</sup> March, 2017)**

**MICHAEL NJERU MATI.....CLAIMANT**

**VERSUS**

**INSIGHT MANAGEMENT CONSULTANTS LIMITED ....RESPONDENT**

**JUDGMENT**

1. The Claimant herein filed his Statement of Claim on 23.7.2012 through the firm of Muriuki Njagagua and Associates Advocates stating that the issues in dispute to be: ***“wrongful dismissal, refusal, failure and neglect of the Respondent to pay the Claimant his wages, entitlement and right terminal dues”***.

**Claimant’s Case**

2. The Claimant indicated that he was employed by the Respondent from March 2011 to 15<sup>th</sup> November 2011 at a basic salary of 15,900/= per month. He worked for the Respondent for 9 months without any complaint.

3. On 15/11/2011 while the Claimant was busy performing his duties, he was called by the Defendant and informed that his services were no longer required. No reasons were advanced for the termination of service by the Respondent.

4. Prior to this day, the Claimant avers that he had sustained severe injuries on 8/9/2011 and was given sick off for 19 days. The Claimant avers that he was not paid his wages for the said period.

5. The Claimant therefore avers that the Respondent’s actions against him were actuated by bad faith, malice, spite and only intended to jettison the Claimant from his employment notwithstanding his good work relationship and values.

6. He seeks that the Court orders he be paid for the 19 days he was sick, hospital transport, underpaid wages, payment in lieu of notice and damages for unfair termination all totalling to 209,264/= as set out under paragraph 12 of his claim.

7. He also seeks to be paid costs and interest on the above amount. Claimant attached his payslips and

demand notice as evidence. He also annexed his medical certificates from Coptic Hospital, copies of sick sheets and appointment card by Coptic Hospital plus Notice of Injury by employee from the Directorate of Occupational Safety and Health services as evidence.

8. The Respondent on their part filed their Replying Memorandum on 20-9-2013 through the firm of Walker Kontos Advocate. They admit that they had employed Claimant for only 7 months between; March 2012 to September 2012. They state that the Claimant abandoned his work without any communication to anyone including his supervisor.

9. They aver that after Claimant absconded, they only heard about him again in November 2012 when they were served with a demand letter. They deny terminating the Claimant's services and want this case dismissed accordingly with costs.

10. I have considered all the evidence and submissions presented to Court by both parties other than the defence filed, the Respondents also filed a witness statement made by one Olivia Mole Mwachofi whose evidence is contradictory to the statement of defence.

11. The witness stated that Claimant was employed on a daily contract subject to availability of work and the last contract was signed on 1.11.2011 which contract was to automatically lapse on 15<sup>th</sup> November 2011.

12. That the contract was therefore not terminated but lapsed automatically. That at the expiry, the Claimant disputed the amounts due to him as sick off, payments and payment for the days he had worked for in the month of November 2011 thus declining to sign the discharge voucher. That the Respondent is willing to pay the Claimant his final dues.

13. The contracts between Claimant and Respondent and last one which was from 1.11.2011 to 15.11.2011 were also produced by the Respondents.

14. Having considered these submissions and evidence, the issues for determination are as follows:

**1. Whether the contract between Claimant and Respondent lapsed or Claimant was terminated.**

**2. If terminated, whether there were valid reasons to warrant the termination.**

**3. What remedies to grant in the circumstances,.**

15. On the 1<sup>st</sup> issue, the Claimant explained how he was terminated without any reason. In their Memorandum of Reply the Respondent stated that he absconded duty.

16. Through the statement of their witness the Respondent depart from their defence and state that the contract between them and the Claimant lapsed. The veracity of this statement was not tested by this Court because the Claimant never had a chance to dispute the contracts or not the same being filed in Court on 14/12/2016 with the submissions and without the leave of the Court parties must stick to their pleadings but here the Respondents hadn't departed from their pleadings stating that the Claimant absconded duty to now aver that the contract lapsed.

17. Going by their pleadings, I will take it that the Respondent's defence is that the Claimant absconded duty in September but this does not; the sick sheets from the Claimant on file which shows he was ill in September 2011.

18. Infact the form filed by DOSH (Directorate of Occupational Safety and Health) show that he was injured and had injury on the middle left hand finger as he operated machinery.

19. It is my finding that the Claimant was therefore dismissed and the contract didn't lapse.

20. We are not informed the circumstances under which the termination took place and so there are no reasons attached to the termination. It is my finding that there were no valid reasons to warrant the Claimant's termination and no due process was followed.

21. This is against the provisions of Section 45(2) of Employment Act and therefore this Court finds the termination unfair and unjustified.

22. I therefore award the Claimant as follows:

**1. 1 months' salary in lieu of notice = 15,900/=;**

**2. Unpaid wages from 1<sup>st</sup> to 15<sup>th</sup> November 2011 – 6,840/=;**

**3. Wages for 19 days when Claimant was sick = 7,847/=;**

**4. 12 months salary as compensation for unfair termination =  $12 \times 15,900 = 190,800$ /=;**

**TOTAL = 221,387/= less statutory deductions**

**5. Plus costs and interest at Court rates with effect from the date of this Judgement.**

**Read in open Court this 1<sup>st</sup> day of March, 2017.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

No appearance for Claimant

No appearance for Respondent