



**REPUBLIC OF KENYA**

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

**CAUSE NO 936 OF 2016**

**HASSAN MUHUMED MOHAMUD.....CLAIMANT**

**VERSUS**

**THE SPEAKER**

**WAJIR COUNTY ASSEMBLY.....1<sup>ST</sup> RESPONDENT**

**THE SECRETARY**

**WAJIR COUNTY ASSEMBLY SERVICE BOARD.....2<sup>ND</sup> RESPONDENT**

**COUNTY ASSEMBLY SERVICE BOARD WAJIR COUNTY.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. Hassan Muhumed Mohamud, the Claimant in this case, worked as the Personal Assistant to the Minority Leader, Wajir County Assembly. He brought this claim pursuant to termination of his employment on 31<sup>st</sup> December 2015.
2. The Respondents were duly served but did not file any reply. On 27<sup>th</sup> October 2016 my brother, **Abuodha J** directed that the matter proceeds as an undefended claim. I heard the Claimant's case on 6<sup>th</sup> February 2017 after which his Advocate filed final submissions.

**The Claimant's Case**

3. On 14<sup>th</sup> July 2014, the Claimant was offered an appointment as Personal Assistant to the Minority Leader, Wajir County Assembly on a three (3) years' contract effective 1<sup>st</sup> August 2014. At the end of the contract, the Claimant was to be paid 31% of his basic salary for each year in service as gratuity.
4. On 10<sup>th</sup> January 2016, the Claimant received a letter dated 3<sup>rd</sup> December 2015 from the 2<sup>nd</sup> Respondent, terminating his employment with effect from 31<sup>st</sup> December 2015. The Claimant states that this letter came as a surprise to him as he had no disciplinary issues throughout his employment period.

He claims that the termination was unilateral, malicious and unjustifiable. He adds that upon termination he was not paid his terminal dues.

5. The Claimant's claim is as follows:

- a. A declaration that the termination of his employment was unfair
- b. Salary in lieu of notice.....Kshs. 64,910
- c. Salary for the remainder of contract period (20 months).....1,298,200
- d. Gratuity for 3 years.....42,594
- e. General damages
- f. Certificate of service
- g. Costs plus interest

### **Findings and Determination**

6. There are two issues for determination in this case:

- a. Whether the termination of the Claimant's employment was lawful and fair;
- b. Whether the Claimant is entitled to the remedies sought.

### **The Termination**

7. The Claimant's employment was terminated by letter dated 3<sup>rd</sup> December 2015 stating as follows:

*“Dear, Hassan Muhumed Mohamud*

**RE: TERMINATION OF EMPLOYMENT**

*We regret to inform you that your employment with Wajir County Assembly is hereby terminated with effect from 31<sup>st</sup> December 2015 vide County Assembly Service Board decision reached on 30<sup>th</sup>*

*November 2015.*

*The Assembly will pay you one month severance pay which is the month of December 2015.*

*Kindly return any property of the institution under your care.*

*The County Assembly Service Board thanks you for the services rendered during your stay and wishes you the best in your future employment.*

*Thanks*

*Yours Sincerely,*

**MR. OSMAN M. ADAN**

**CLERK/SECRETARY**

**COUNTY ASSEMBLY SERVICE BOARD**

8. This letter discloses no reason for termination of the Claimant's employment. In his testimony before the Court, the Claimant stated that he did not know why his employment was terminated. The Respondents' action in this regard was clearly in contravention of Section 43 of the Employment Act, 2007 which requires an employer to demonstrate a valid reason for terminating the employment of an employee. In the circumstances, the Court was unable to gauge the reasonableness of the Respondents' action as defined by **Lord Denning** in **British Leyland UK Ltd v Swift [1981] IRLR 91**.

9. Moreover, the Claimant was no subjected to the mandatory disciplinary procedure set out under Section 41 of the Employment Act and as held by the Court of Appeal in **CMC Aviation v Mohammed Noor [2015] eKLR** where an employee is not given an opportunity to be heard, the ensuing termination is unfair within the meaning of Section 45 of the Act.

**Remedies**

10. Overall, the Court finds the termination of the Claimant's employment substantively and procedurally unfair and awards him six (6) months' salary in compensation. In making this award I have taken into account the unexplained unilateral decision to terminate the Claimant's employment. I further award the Claimant one (1) month's salary in lieu of notice.

11. At termination, the Claimant had a running three (3) year contract at the end of which he would have earned gratuity. In light of the finding that the termination was unlawful and unfair, I award him gratuity for the full term of the contract.

12. The Court found no basis for the claims for salary for the remainder of the contract and general damages which are dismissed.

13. Ultimately I enter judgment in favour of the Claimant as follows:

a. 6 months' salary in compensation.....	Kshs. 383,460
b. 1 month's salary in lieu of notice.....	63,910
c. Gratuity (35,910x31%x3).....	<u>33,396</u>
<b>Total.....</b>	<b>480,766</b>

14. This amount will attract interest at court rates from the date of judgment until payment in full.

15. The Claimant is also entitled to a certificate of service and the costs of this case.

16. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI**

**THIS 26<sup>TH</sup> DAY OF MAY 2017**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Kaingu for the Claimant

No appearance for Respondent