



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

**AT MOMBASA**

**CAUSE NO. 432 OF 2014**

**JUSTINE ANYAGA MORONDI.....CLAIMANT**

**VERSUS**

**READY CONSULTANCY LTD.....RESPONDENT**

**J U D G M E N T**

**INTRODUCTION**

1. This is a claim for terminal dues plus compensation for unfair termination of the claimant's contract of employment by the respondent. It is the claimant's case that he was dismissed for no good reason and without following the legal procedure.
2. The respondent had denied the alleged unfair termination and averred that the claimant was fairly terminated for his gross misconduct.
3. The issues for determination framed by the parties are whether the termination of the claimant's services was unfair and whether the damages sought ought to issue. To answer the said questions, the parties relied on their pleadings, written witness statements and the documentary evidence and filed written submissions.

**CLAIMANT'S CASE**

4. The clamant stated in his written statement that he was employed by the respondent as a supervisor on 17/8/2013 and posted to Mombasa Maize Millers Ltd at Kingorani. He worked there until January 2016 when he was verbally dismissed by the respondent's personnel manager m/s Gloria Moses. Before the termination he had been served with show cause letter dated 7/12/2015 which he replied promptly. As at the time of his termination, his salary was ksh.16450 per month. He prayed for one month salary in lieu of notice and twelve months salary as compensation for unfair termination.

**DEFENCE CASE**

5. The respondent's operations manager M/s Gloria Endekwa stated in her written statement that the claimant was summarily dismissed for his gross misconduct. That as a supervisor, he used his position to solicit bribes from casual employees in order to give them employment. She denied the claim for the damages sought and contended that after the termination the claimant was paid all his terminal dues including one month salary in lieu of notice.

## ANALYSIS AND DETERMINATION

6. There is no dispute that the claimant was employed by the respondent as supervisor until he was summarily dismissed for gross misconduct. The issues for determination as framed by the parties are:

- a. Whether the termination of the claimant's services was unfair.
- b. Whether the reliefs sought ought to issue.

### **Unfair termination**

7. Under section 45(2) of the Employment Act, termination of employees contract of service is unfair if the employer fails to prove that it was grounded on a valid and fair reason and that it was done after following a fair procedure. In this case, the reason cited for the summary dismissal of the claimant is that he used his position as a supervisor to solicit bribes from job seekers in order to give them casual labour. The respondent has however not called any witness or adduced by documentary or other evidence to prove such bribery allegation. The written statement by the operations manager is sufficient to prove on a balance of probability that the claimant did the alleged offence.

8. In addition to the foregoing the respondent has not proved that the claimant was given a fair hearing as required under Section 41 of the Employment Act. Under the said section, the employer is barred from dismissing his employees for misconduct before first explaining to the employee, in a language he understands and in the presence of a fellow employee or shop floor union representative of his choice, the reason for the intended dismissal and thereafter invite him and the chosen companion to air their defence for consideration before the dismissal is decided. All what the respondent did was to serve the claimant with a show cause letter and after receiving his response, failed to verify the alleged misconduct vide a disciplinary hearing.

9. In view of the respondent's failure to prove on a balance of probability that the claimant did solicit for bribes from job seekers and she gave him a fair hearing before his summary dismissal, I find and hold that the dismissal of the claimant was indeed unfair as alleged by the claimant.

### **Reliefs**

10. Under Section 49 of the Act, I award the claimant ksh.16450 being one month salary plus ksh.82850 being five months compensation for unfair termination. In awarding the said compensation, I have considered the fact that the claimant had served for fairly short period of two and half years only. In addition, I have considered that, no gratuities were paid to him after termination. Although the defence witness alleged that the claimant was paid his terminal dues plus salary in lieu of notice, no evidence of such payment was adduced.

11. The claim for general damaged for wrongful dismissal is however dismissed for lack of legal basis and also in view of the compensation awarded herein above.

## DISPOSITION

12. For the reasons that the summary dismissal of the claimant was unfair, I enter judgment for him in the sum of ksh.98700 plus costs and interest from the date hereof. The said award shall be subject to the statutory deductions.

Dated, signed and delivered this 29<sup>th</sup> September 2017

O.N. Makau

Judge