



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

**AT NAIROBI**

**CAUSE NUMBER 1194 OF 2014**

**DERICK MWANTHI KISYANGA.....CLAIMANT**

**VERSUS**

**HEBATULLAH BROTHERS LIMITED.....RESPONDENT**

**JUDGEMENT**

1. By a memorandum of claim filed on 17<sup>th</sup> July, 2014 the claimant averred that he was employed by the respondent as a general worker at a salary of Kshs 12,331/= per month. He worked continuously for a whole year with no annual leave.

2. The claimant further pleaded that on or about the month of March 2014 he fell ill and requested for permission to attend hospital which was duly granted. The doctor after attending to him gave him 7 days bed rest due to the serious nature of his illness.

3. He averred that when he reported to work on 28<sup>th</sup> April, 2014 the respondent maliciously terminated his services accusing him of frequent absenteeism, using abusive language to his immediate supervisors and gross misconduct.

4. The claimant refuted these allegations and averred that he always carried out his duties with due dispatch and diligence and that the dismissal was actuated by malice. The claimant therefore sought judgment against the respondent for wrongful dismissal and unfair termination of services. He also sought to be paid for his annual leave not taken. The respondent entered appearance through M/s Kangethe Waitere & Co Advocates but did not file a defence to the claim. Further the matter proceeded ex-parte after the court became satisfied that the respondent was served with the hearing notice.

5. In his oral evidence in court the claimant repeated most of the averments in the memorandum of claim. He denied absconding work and further that he was rude. The matter having proceeded ex-parte the court has no option but to believe the claimant's evidence which was largely a replication of his averments in the pleadings. The burden of proof and justifying reasons for dismissal rests on the employer. The employer did not file a defence to this claim. The court will therefore enter judgement against the respondent as follows:

- a. One month's salary in lieu of notice 12,331
- b. Eight months salary for unfair

termination of service 98,648

c. Leave untaken during the period of employment 25,893

**136,872**

d. Costs

6. It is so ordered.

Dated at Nairobi this 22<sup>nd</sup> day of September, 2017

**ABUODHA J. N.**

**JUDGE**

Delivered this 22<sup>nd</sup> day of September, 2017

**NDERI NDUMA**

**JUDGE**

In the presence of:

.....for Claimant

.....for Respondent