



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 2178 OF 2014

KENNETH ODHIAMBO AKUMU.....CLAIMANT

VERSUS

ALLIED EAST AFRICA LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. By a Statement of Claim dated 5th December 2014 and filed in court on 8th December 2014, the Claimant has sued the Respondent for unlawful termination of employment.
2. The Respondent did not file any reply, in spite of due service. The matter therefore proceeded as an undefended claim.

The Claimant’s Case

3. The Claimant was employed by the Respondent, in the position of Quality Controller, on a one year contract, effective 1st October 2013. His appointment was subject to a three (3) months’ probation period. On 2nd December 2013, the Claimant was selected as Team Leader, Quality Control Unit and on 2nd May 2014, he was appointed as Factory Floor Rules Enforcer.
4. On 23rd May 2014, the Claimant was issued with a show cause letter alleging that he was engaged in acts of misconduct. The Claimant responded to the show cause letter on 24th May 2014 but was informed by the Human Capital and Administration Assistant that his reply had come late as the matter had already been escalated to the Group Human Capital and Administration Manager.
5. On 27th May 2014, the Claimant was issued with a letter of summary dismissal, on grounds of gross misconduct. He states that he was not accorded adequate time to defend himself. It is his case that the dismissal was unjustifiable and unfair. He now claims the following:

- a) 5 months’ salary for remainder of contract.....Kshs. 115,000
- b) Unremitted statutory deductions from January 2014.....13,140
- c) House allowance.....27,600
- d) Transport allowance.....40,000

- e) Unlawful deduction for the month of May 2014.....3,000
- f) Wrongful dismissal.....46,000
- g) Costs plus interest

Findings and Determination

6. There are two (2) issues for determination in this case:

- a) Whether the Claimant has made out a case for unlawful and unfair dismissal;
- b) Whether the Claimant is entitled to the remedies sought.

Unlawful Dismissal?

7. The Claimant was dismissed by letter dated 27th May 2014, stating as follows:

“RE: SUMMARY DISMISS (SIC)-GROSS MISCONDUCT AT THE WORK PLACE

Reference is made to the show cause letter dated 23rd May 2014 on the above subject matter refers(sic).

The management has noted with serious concern that you have failed to respond to our show cause letter dated 23rd May 2014 on the matter of gross misconduct of knowingly failing to obey a lawful and proper command which is within the scope of your duty to obey your boss (sic). Secondly, you willfully neglected to perform your duties that you are entitled to perform on daily basis. Thus the Company has decided to dismiss you from service in accordance with the provisions of Allied East Africa Human Capital Policies and Employment Act 2007 on gross misconduct of employees. The dismissal is with effect from the date of this letter.

You are required to handover all Company inventory and/or documents that may still be under your control, together with the staff identification card to the Human Capital and Administration Manager, immediately upon receipt of this letter.

Note that any advances/facilities accorded to you by virtue of your status as a staff member in the Company become repayable immediately in full.

*Please note that any monies due to you less **liabilities/surcharges** owed by you to the Company will be calculated and applied as appropriate as soon as you return the attached clearance form HC&A/2 duly completed.*

(Signed)

ALI NOOR

CHAIRMAN – EAL”

8. This letter accuses the Claimant of three offences; first, failure to respond to show cause letter dated 23rd May 2014, second, failure to obey a lawful command and third, negligence in the performance of his duties. With regard to the first accusation, the Claimant told the Court that he responded to the show cause letter dated 23rd May 2014 by 11.00 am, on 24th May 2014. This was in accordance with the requirement on the face of the show cause letter.

9. On the second and third accusations, the Court observed that by the show cause letter dated 23rd May

2014, the Respondent made general accusations of misconduct and poor performance against the Claimant. In *Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology [2014] eKLR*, this Court held that in order for an employee to respond to allegations made against them, the charges must be clear. Further, the employee must be allowed sufficient time to prepare their defence.

10. None of these conditions were met in this case and the Court finds that the Respondent failed to discharge its obligations under Sections 41 and 43 of the Employment Act, 2007. The result is that the Claimant's dismissal was substantively and procedurally unfair and he is entitled to compensation.

Remedies

11. In light of the foregoing, I award the Claimant three (3) months' salary in compensation. In making this award, I have taken into account the

Claimant's length of service, as well as the Respondent's conduct prior to the dismissal. I further award the Claimant one (1) month's salary in lieu of notice.

12. According to the Claimant's offer of employment dated 1st October 2013, he earned a consolidated gross salary. The claim for house allowance is therefore without basis and is disallowed. With regard to the claim for unremitted statutory deductions, the only thing to say is that any such dues are payable to the respective statutory bodies and not to the Claimant. The claims for transport allowance and unlawful salary deduction were not proved and are dismissed.

13. In the end, I enter judgment in favour of the Claimant as follows:

a) 3 months' salary in compensation.....	Kshs. 69,000
b) 1 month's salary in lieu of notice.....	23,000
Total.....	92,000

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

15. The Claimant will have the costs of the case.

16. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI

THIS 27TH DAY OF OCTOBER 2017

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JUDGE

Appearance:

Miss Amboko for the Claimant

No appearance for the Respondent