



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET

CAUSE NO. 21 OF 2017

(Originally Nakuru Cause No. 632 of 2014)

PAUL KIPKEMOI LELEI

CLAIMANT

V

LAMINATE TUBE INDUSTRIES LIMITED

RESPONDENT

JUDGMENT

1. This Cause was heard on 2 November 2017 when Paul Kipkemoi Lelei (Claimant) and Valentine Saina, the Human Resource Manager with Laminate Tube Industries Ltd (Respondent) testified.
2. Although the parties had framed some 9 questions as arising for the Court's determination, the real issues can be condensed into 2, to wit, *whether the Claimant's employment was unfairly terminated and appropriate remedies/orders.*
3. The Claimant filed his submissions on 8 November 2017, while the Respondent filed its submissions on 21 November 2017.
4. The delivery of this judgment has been brought forward due to my transfer (Deputy Registrar notified parties of the change through her letter dated 10 November 2017).

Fairness of termination

5. Pursuant to section 41 of the Employment Act, 2007, an employer is under a statutory obligation to inform an employee of any allegations which may lead to termination of the employment contract if the allegations involve *misconduct, performance or physical incapacity.*
6. In the instant case, the Respondent's Human Resources Manager, mirroring what was stated as the reason in the termination letter, stated that the termination of the Claimant's contract was grounded on a contractual provision allowing termination on notice of 1 month or pay in lieu of notice.
7. However, under cross examination, the witness gave the reason as *performance.*
8. Before the coming into effect of the Employment Act, 2007, an employer could terminate an employee's contract *without cause, for a good reason, for a bad reason or for no reason* provided that the contractual provision on termination was complied with or appropriate amount paid in lieu thereof.
9. In my view, the legal implication of section 41 of the Employment Act, 2007 as read with sections 43 and 45 have radically shifted the legal framework and it is imperative that the employee is given reasons

Radido Stephen

Judge

Appearances

For Claimant Mr. Kenei instructed by Chepkwony & Co. Advocates

For respondent Mr. Bungei instructed by Kamau Lagat & Co. Advocates

Court Assistants Nixon/Etyang