



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 214 OF 2014**

**ALVIN MASIEMO JOHN**

**CLAIMANT**

v

**COMPLY INDUSTRIES LIMITED**

**RESPONDENT**

**JUDGMENT**

1. Alvin Masiemo John (Claimant) instituted legal proceedings against Comply Industries Ltd (Respondent) on 17 July 2015 alleging breach of contract/unfair termination of employment.
2. The Respondent filed its Response on 12 February 2016, out of time allowed. It also did not serve the Response upon the Claimant until the morning of hearing, on 19 July 2017.
3. The Court declined an attempt by the Respondent to have the Response admitted as no sufficient or reasonable grounds were given for not filing within time and/or serving it before hearing or moving Court earlier to admit it.
4. The Claimant filed written submissions on 18 September 2017 (should have been filed before 30 August 2017) while the Respondent's submissions were filed on 26 September 2017.
5. The Court has considered the material placed before it and identified the *Issues* for determination as, whether the termination of the Claimant's contract was unfair and appropriate remedies.

**Unfairness**

**Procedural fairness**

6. The Claimant's testimony was that he reported to work and worked normally on 23 March 2014 and that the next day, a supervisor called him at about 11.00am and instructed him not to report to work for the night shift.
7. According to the Claimant he got concerned and went and met with 2 Managers called Pradeep and Indraj.
8. The 2 Managers confirmed the information that he should not report to work but no reasons were given. Later, a supervisor Daniel Ochola told him the reason was that he had stolen from a vehicle.
9. Undeterred, the Claimant reached out to the Respondent's Security Manager, George Nyakimoli who told him there was no theft and he should report to work the next day. He reported but was turned away.

10. The Claimant stated that there was no hearing before the dismissal.

11. The Respondent contended in the submissions that the Claimant was absent without permission and when asked to explain when a show cause was sent to his last known address.

12. However it led no evidence to support that position. It did not discharge the statutory obligation imposed on employers by sections 41, 43 and 45 of the Employment Act, 2007.

13. Pursuant to section 41 of the Employment Act, 2007, an employer is obligated to conduct a hearing if it is contemplating terminating an employment contract on the grounds of *misconduct, poor performance or physical incapacity*.

14. Though the Response was not admitted, the reason given therein was absence, a *misconduct*.

15. The Respondent did not confront the Claimant during cross examination with particulars of a hearing or when such hearing took place.

16. The Court can therefore infer and conclude that the Claimant's employment was terminated unfairly.

### **Appropriate remedies**

#### **Compensation**

17. The Claimant served the Respondent for about 5 years and in consideration of the length of service, the Court is of the view that the equivalent of 6 months wages would be appropriate (salary at time of separation was stated as Kshs 14,300/-).

#### **General damages for emotional and mental anguish**

18. No evidential or legal foundation for this claim was laid before Court and it is dismissed.

#### **Statutory deductions**

19. The Claimant should utilise the provisions of the National Social Security Fund Act on unremitted contributions in the first instance.

#### **Accrued leave**

20. The Claimant's testimony that he did not go on annual leave for 5 years was not challenged or controverted. He pleaded the amount as Kshs 57,600/- and the Court will allow the same.

#### **Pay in lieu of notice**

21. The Claimant was paid by the month and would be entitled to the equivalent of 1 month pay in lieu of notice.

22. Before concluding, the Court notes that the Claimant was paid Kshs 30,515/- as terminal dues and the same should be deducted from the awards herein.

### **Conclusion and Orders**

23. The Court finds and holds that the termination of the Claimant's contract of employment was unfair and awards him and orders the Respondent to pay him

(a) Compensation                      Kshs 85,800/-

(b) Accrued leave	Kshs 57,600/-
(c) Pay in lieu of notice	Kshs 14,300/-
Less	Kshs 30,515/-
<b>TOTAL</b>	<b>Kshs 127,185/-</b>

24. The Claimant did not file submissions within agreed timelines and therefore he is awarded costs on half scale.

**Delivered, dated and signed in Nakuru on this 17<sup>th</sup> day of November 2017.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Ms. Chepngetich instructed by Mboga G.G. & Co. Advocates

For Respondent Ms. Kerubo instructed by Mumia & Njiru Advocates

Court Assistants Nixon/Martin