



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**CAUSE NO. 212 OF 2015**

**LINUS MURITHI.....CLAIMANT**

**VERSUS**

**MERU CENTRAL DAIRY CO-OPERATIVE UNION LIMITED...RESPONDENT**

(Before Hon. Justice Byram Ongaya on Wednesday, 20<sup>th</sup> December, 2017)

**JUDGMENT**

The claimant filed the memorandum of claim on 19.11.2015 in person. The claimant's case is that effective 26.02.2014 the respondent employed him as a coolant attendant. Subsequently and by the contract of employment dated 01.06.2015, the respondent employed the claimant as a coolant attendant for 7 months effective 01.06.2015. Clause 3 of the contract provided that other than on summary dismissal, termination of contract shall be by 7 days notice or 7 days salary in lieu of notice by either party.

The claimant testified that on 13.07.2015 he was telephoned by a person from the respondent's human resource department and summoned to the human resource office the following morning.

The following day the claimant met the respondent's human resource manager one Fridah. She took a termination letter and delivered it to the claimant. The letter dated 14.07.2015 stated thus, **"This is to inform you that your employment with Meru Central Dairy Co-operative Union has been terminated effective immediately. Kindly note that you will be paid in lieu of your notice period of 7 days in accordance with your employment contract and other entitlements. You are therefore advised to clear with the union as soon as possible to facilitate the payment of your full and final benefits. We wish you well in your future endeavours."** The letter was signed by Fridah G. Mbaya, Human Resource Manager.

The claimant being dissatisfied with the termination filed the suit praying for judgment against the respondent for:

- a. The declaration that the termination of employment was null.
- b. Reinstatement back in employment unconditionally.
- c. Costs to be provided by the respondent.

The claimant's case is that the termination was unfair for want of reasons as it was against section 41(1) and (2) of the Employment Act, 2007.

The respondent opposed the suit by filing the defence on 06.03.2016 through Mwenda Mwarania & Company Advocates. The respondent's case was that the claimant's contract of employment was terminated in accordance with clause 3 of the written contract. Thus the suit should be dismissed with costs.

The court has considered the pleadings, the evidence and the final submissions. It is established that there had been reports about the claimant's poor performance in view of the untidy premises at the place he

was deployed. In particular, the public health officer had drawn the respondent's attention to that state of dirt at the coolant premises the claimant had been deployed to keep clean. Thus, the respondent decided to terminate the contract per clause 3 thereof.

The court returns that in the circumstances of the case the termination was in accordance with clause 3 of the contract of employment and which was binding upon the parties. Accordingly the termination was not unfair and the suit is liable to dismissal with costs. Taking all the circumstances of the case into account, the suit is dismissed with orders that the claimant will pay part of the respondent's costs of the suit now fixed at **Kshs. 10, 000.00**.

**Signed, dated and delivered** in court at **Nyeri** this **Wednesday, 20<sup>th</sup> December, 2017**.

**BYRAM ONGAYA**

**JUDGE**