



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO 1259 OF 2014**  
**EVANS ACHIMBA.....CLAIMANT**  
**VS**  
**WANANCHI CLOTHING FACTORY LTD.....RESPONDENT**

**RULING**

1. This ruling proceeds from a preliminary objection raised by the Respondent by notice dated 11th December 2015. The objection is based on the ground that the Claimant was paid all his dues upon which he executed a discharge note on 2nd November 2013.
2. Counsel for the Respondent, Mr. Gitonga submitted that having executed an unequivocal discharge to the effect that he had no further claims, the Claimant cannot now lay a claim against the Respondent. His current claim should therefore be struck out.
3. In reply, the Claimant appearing in person told the Court that the discharge note should not be taken in isolation, adding that he was forced to sign it by the police. He submitted that it was only fair that the matter be heard substantively.
4. The single issue for determination in this application is whether the Claimant is barred from bringing this claim on account of a discharge note signed by him on 2nd November 2013. The relevant part of the discharge note reads as follows:

*“I Evans Achimba a former employee of Wananchi Clothing Factory (K) Ltd accept the (sic) Shillings Twenty Thousand as a full and final settlement of all claims against the Company and the Director Mr. Shabbir Anjarwalla and hereby state that I have no further claims against them.”*
5. The Court was referred to the decision in *Moses Olubandwa Wemisiko v Unga Limited & 2 Others (Cause No 273 of 2012)* where **Nzioki Wa Makau J** held that a similar document signed by an employee was an unequivocal discharge.
6. I hold a different view on this matter. In *Simon Muguku Gichigi v Taifa Sacco Society Limited (Cause No 681 of 2012)* this Court held that a discharge note which departing employees are routinely required to execute as a condition for payment of their dues, cannot be used by an employer to circumvent their obligation to an employee.
7. If the law is not followed in effecting a termination of employment, no form of discharge can cure the irregularity. To hold otherwise would be to grant employers a licence to disregard the law and wave a

form of discharge as a defence thus perpetuating injustice against employees who are often the weaker party in an employment contract. The Court cannot be barred from inquiring into the legality of a termination of employment by a document executed at the work place.

8. For the foregoing reasons, I find the preliminary objection not well taken and proceed to overrule it with costs being in the cause.

9. It is so ordered.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 22ND DAY OF JANUARY 2016**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Evans Achimba (the Claimant in person)

Mr. Gitonga for the Respondent