



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 610 OF 2015**

**BONFACE MUTUKU.....CLAIMANT**

**VERSUS**

**MANPOWER NETWORK LTD.....RESPONDENT**

**JUDGMENT**

1. By a memorandum of claim filed on 16<sup>th</sup> April, 2015 the claimant averred that he was employed by the respondent on 7<sup>th</sup> August, 2012 at a salary of Kshs.10,000/= per month and worked until 10<sup>th</sup> March, 2015 when he was called by a Mr. Mwekesi and asked to report to work at 3.p.m. yet he was from a normal shift at noon. He became unwell but when he returned for his normal shift he was informed by Mr. Mwekesi that his services were no longer needed. He averred that his termination was therefore wrongful and unfair and sought an order of compensation from the Court.
2. The respondent through Ms. V. W. Maina & Company filed a response which essentially denied every allegation by the claimant without offering any factual position to counter the claimant's allegations.
3. The parties chose not to call any oral evidence and instead proceeded by way of written submissions.
4. In the witness statement filed by the respondent's witness, Mr. Moses Mburu, he states that the claimant was employed as a casual labourer working in shifts wherever the respondent would post him. According to Mr. Mburu the site manager Mr. Mwekesi called the applicant to come to work at 3.00 p.m shift instead of his usual night shift to cover shortage of line operators but the applicant refused. He instead reported to work the following morning to drop his work clothes and tools and informed the site manager he had quit.
5. According to Mr. Mburu the respondent never sacked the claimant through a phone call as alleged. The claimant in his submissions never reacted or controverted these allegations by Mr. Mburu against him.
6. In a claim for wrongful dismissal or unfair termination of employment, the burden is on the claimant to show that the dismissal was wrongful or unfair while the respondent has the duty to show there were justifiable reasons to dismiss or terminate the claimant's services.

7.The claimant alleged he was dismissed via a phone call yet Mr. Mburu has refuted those allegations through his statement that the claimant refused to report for a 3 p.m. shift only to return the next day and return his work clothes and shoes. His claim that he was unwell was not backed by any medical evidence.

8.To this extent the Court is on the view that the claimant has not made out a case to warrant the granting of the orders sought with consequence that the same is hereby dismissed with costs.

9. It is so ordered.

**Dated at Nairobi this 5<sup>th</sup> day of February 2016**

**Abuodha J. N.**

**Judge**

**Delivered this 5<sup>th</sup> day of February 2016**

**In the presence of:-**

.....**for the Claimant and**

.....**for the Respondent.**

**Abuodha J. N.**

**Judge**