



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO 569 OF 2015**

**EDWIN ERICK MANGAU.....CLAIMANT**

**VS**

**KAMPALA COACH LIMITED.....RESPONDENT**

**AWARD**

**Introduction**

1. The Claimant's claim brought by way of a Memorandum of Claim dated 17th April and filed in Court on 22nd April 2013 seeks relief for unlawful termination and failure to pay terminal dues. The Respondent filed a defence on 28th August 2013 but did not attend the hearing in spite of due service. The Court therefore heard the Claimant *ex parte* on 25th November 2015.

**The Claimant's Case**

2. The Claimant states that he was employed by the Respondent in the position of Driver at a monthly salary of Kshs.20,000.00 effective 15th January 2012. He states that he was assigned duties to drive the Respondent's buses on the Nairobi-Kampala-Juba route. On 11th December 2012, the Claimant was involved in an accident along the Malaba-Eldoret Road. He was subsequently issued with a suspension letter on 15th December 2012 and was not assigned any duties thereafter.

3. The Claimant's claim is as follows:

- a. A declaration that the termination of his employment was unlawful
- b. Reinstatement without loss of benefits or in the alternative:
  - i. One month's salary in lieu of notice.....Kshs.20,000.00
  - ii. Unpaid salary for January-September 2012.....140,000.00
  - iii. Withheld salary for October and November.....19,534.00
  - iv. 21 days leave pay.....14,000.00
  - v. Prorata leave.....11,666.67
  - vi. Service pay.....10,000.00
  - vii. Overtime compensation (500 hours).....500,000.00
  - viii. Compensation for unlawful termination.....240,000.00
- c) Certificate of service
- d) Costs and interest

## The Respondent's Case

4. In its defence filed on 28th August 2013, the Respondent admits that the Claimant was in its employment but denies the entire claim as tabulated. For some unexplained reason the Respondent does not submit to the jurisdiction of this Court

## Findings and Determination

5. The following are the issues for determination before the Court:

- a. Whether the Respondent unlawfully terminated the Claimant's employment;
- b. Whether the Claimant is entitled to the remedies sought.

## The Termination

6. According to the Claimant's testimony which was not challenged by the Respondent, he was suspended on 15th December 2012 and was not assigned any duties thereafter. The suspension letter states as follows:

*“Dear Edwin,*

**RE: ACCIDENT INVOLVING BUS REG. NO. KBC 809G AT MALABA ROAD  
BLOCK ON 11/12/2012**

*We refer to the above matter.*

*Following the above accident details of which are well known to yourself as the cause of the accident, Management has decided to put you on unpaid suspension pending investigation into the accident.*

*We shall inform you once the investigations are complete.*

*Yours Truly,*

**RICHARD KHAOYA**

**HUMAN RESOURCE MANAGER**

0. 1. *Route Manager*

2. *Accounts”*

7. Subsequent to this letter, the Respondent wrote to the Officer In Charge, Malaba Traffic Police on 27th December 2012, asking that a traffic case against the Claimant be withdrawn.

8. From the suspension letter, it would appear that the Claimant was put on an indefinite suspension without pay. In ***Rashid Jeneby v Prime Bank Limited [2015] eKLR*** this Court held that a prolonged suspension without pay acquires the character of a disciplinary action meted against an employee without due process. I find no reason to depart from this holding.

9. The Claimant's evidence that he was not assigned duties after his suspension was not controverted and the Court found no reason not to believe it. More importantly, there was no evidence that the investigations referred to by the Respondent in the suspension letter were ever conducted and whether the outcome if any was made known to the Claimant. This was a significant lapse because it was not possible to tell whether the accident that led to the Claimant's suspension was caused by his negligence or by some mechanical fault in the motor vehicle.

10. Overall, I find that the Respondent effectively terminated the Claimant's employment from the date of suspension being 15th December 2012. I further find that the termination was without justifiable cause and was undertaken without due procedure as required under Section 41 of the Employment Act, 2007. The termination was therefore unfair within the meaning of Section of 45 of the Act and the Claimant is entitled to compensation.

### **Remedies**

11. Having found the termination of the Claimant's employment unfair both substantively and procedurally I award him three (3) months in compensation. In making this award I have taken into account the Claimant's length of service as well as the Respondent's conduct in the termination transaction. I also award the Claimant one month's salary in lieu of notice.

12. The Respondent did not produce any leave records to counter the Claimant's claim for leave pay and I therefore allow this claim. Since there was no evidence that the Claimant was a member of the National Social Security Fund (NSSF) or any pension scheme, the claim for service pay also succeeds and is allowed.

13. The claims for salary arrears and overtime compensation were not proved and are dismissed.

14. Finally I make an award in favour of the Claimant in the following terms:

- a. 3 months' salary in compensation for unfair termination.....Kshs. 60,000.00
- b. 1 month's salary in lieu of notice.....20,000.00
- c. Leave pay (20,000/30x21).....14,000.00
- d. Service pay (20,000/30x15).....10,000.00

**Total.....104,000.00**

15. I direct the Respondent to issue the Claimant with a certificate of service and to pay the costs of this case.

16. The award amount will attract interest at court rates from the date of the award until payment in full.

17. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS**

**5TH DAY OF FEBRUARY 2016**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Ongicho for the Claimant

No appearance for the Respondent