



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO. 669 OF 2010**

**SEBASTIAN ONYANGO.....CLAIMANT**

v

**FRESH AND JUICI COMPANY LIMITED.....RESPONDENT**

**JUDGMENT**

1. Sebastian Onyango (Claimant) sued Fresh and Juici Co. Ltd (Respondent) on 9 June 2010 and the issue in dispute was stated as *failure by the Respondent to pay terminal benefits to the Claimant*.
2. The Respondent filed a Memorandum of Response and submissions on 15 September 2010.
3. After several appearances, the Cause was heard on 23 September 2010 by Chemmutut J (as he was then) and he reserved the delivery of an award on notice. He left office before delivery of the award.
4. The Cause was thereafter mentioned before Onyango J on 4 December 2012 and the Judge directed the file to be placed before the Registrar to be assigned to another judge as her ladyship had previously handled the dispute before her appointment as a judge.
5. On 11 January 2012, the Principal Judge directed that the Cause be placed before any other judge.
6. That was not to be, because the file was only brought up on 18 April 2016 during the *service week*.
7. The Registrar of the Court had through notices in the daily newspapers, online and through individual notices to the parties (representatives) advised that the hearing was fixed for 18 April 2016.
8. The Claimant and/or his advocate were not present when the Cause was called out for hearing but the Respondent was represented by Mr. Masese.
9. Mr. Masese when informed by the Court that the Cause had been heard proposed that the Court do proceed to deliver a judgment.
10. The Claimant is not challenging the termination of his employment, rather he is seeking terminal benefits and he stated the same as *unpaid wages for April 2010; 1 month salary in lieu of notice; Unpaid leave for 2005, 2009 and 2010 and service pay for the period served*.
11. The Claimant's letter of termination which was exhibited by the Respondent informed him that he would be paid outstanding terminal dues totalling Kshs 11,098/75 (nett). He was summarily dismissed.
12. The Claimant, according to the Respondent declined to collect the dues.
13. The Court will examine the soundness of the benefits/dues sought.

**Unpaid wages for April 2010**

14. The Claimant is entitled as of right to wages up to the date of summary dismissal. The computations by the Respondent give a sum of Kshs 9,635/- (inclusive of house allowance).

**Pay in lieu of notice**

15.The Respondent did not suggest that the hearing contemplated by section 41 of the Employment Act, 2007 was conducted and therefore the dismissal was procedurally unfair.

16.The Claimant's basic wage was Kshs 8,375/- and he is entitled to an equivalent as pay in lieu of notice in terms of section 35(1)(c) of the Employment Act, 2007.

### **Unpaid leave**

17.The Claimant did not lay any evidential basis for this head of claim.

18.The Respondent had tendered the equivalent of 9 days leave quantified as Kshs 2,513/- and the Court finds this is what the Claimant is entitled to.

### **Service pay**

19.The Claimant did not provide any contractual or statutory basis for service pay. Moreover, the pay slip he exhibited show he was contributing to the National Social Security Fund, and by dint of sections 35(5) & (6) of the Employment Act, 2007, he is not entitled to service pay.

### **Overtime**

20.Although the Claimant did not seek overtime, the Respondent had included Kshs 1,030/75 unpaid overtime. In all fairness, the Claimant should be awarded the overtime.

### **Conclusion and Orders**

21.The Court finds and holds that the summary dismissal of the Claimant was procedurally unfair and awards him and orders the Respondent to pay him

a. Unpaid wages April 2010	Kshs 9,635/-
b. 1 month pay in lieu of notice	Kshs 8,375/-
c. Leave	Kshs 2,513/-
d. Overtime	Kshs 1,030/75
TOTAL	<b>Kshs 21,553/75</b>

22.No order as to costs.

**Delivered, dated and signed in Nairobi on this 22<sup>nd</sup> day of April 2016.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Irungu Mwangi Nganga T.T. & Co. Advocates

For Respondent Mr. Masese, Senior Legal Officer, Federation of Kenya Employers

Court Assistant Nixon