



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO 237 OF 2015**

**GEORGE KIGUDWA MULWALE.....CLAIMANT**

**VS**

**BEEMART LAUNDRY & DRY CLEANING LTD.....RESPONDENT**

**AWARD**

**Introduction**

1. By a Statement of Claim dated 23rd February and filed in Court on 24th February 2015, the Claimant has sued the Respondent for unlawful termination and failure to pay terminal dues. The Respondent filed a Notice of Appearance on 12th November 2015 but did not file a defence. The Court therefore heard the Claimant *ex parte* on 10th February 2016.

**The Claimant's Case**

2. The Claimant was employed by the Respondent as a Presser effective 1st May 2013. He was paid Kshs. 11,000 as monthly salary which he claims was below the minimum wage of Kshs. 12,148. The Claimant further states that he worked from 6.00 am to 4.30 pm without overtime compensation. He was neither housed nor was he paid house allowance.

3. On 17th January 2015, the Claimant's employment was terminated verbally without notice. No reason was given for the termination and the Claimant was not paid his salary for the month of December 2014 and for 17 days worked in January 2015. It is the Claimant's case that the termination of his employment was in contravention of the Employment Act, 2007.

4. He claims the following:

- a. A declaration that the termination of his employment was unlawful
- b. Salary for December 2014.....Kshs. 11,000
- c. 1 month's salary in lieu of notice.....11,000
- d. Salary for 17 days worked in January 2015.....7,313
- e. Annual leave.....853
- f. Prorata leave.....4,266
- g. House allowance for 56 months.....92,400
- h. Off days for 6 months.....58,591
- i. Overtime.....30,442
- j. Public Holidays.....9,041
- k. Underpayments.....17,066
- l. Severance pay.....22,000

- m. Compensation.....132,000
- n. Certificate of service

**Findings and Determination**

- 5. The issues for determination in this case are as follows:
  - a. Whether the termination of the Claimant's employment was lawful;
  - b. Whether the Claimant is entitled to the remedies sought.

**The Termination**

- 6. According to Section 43 of the Employment Act, 2007 failure by an employer to demonstrate a valid reason for termination of employment renders the termination unfair within the meaning of Section 45 of the Act. The Claimant told the Court that the termination of his employment was triggered by his inquiring about his salary for December 2014 which had not been paid.
- 7. The Respondent did not offer any evidence to counter this assertion and the Court found no reason to disbelieve the Claimant. Inquiring about payment of an employee's salary is not a ground for termination and the Court therefore finds that the Respondent had no valid reason for terminating the Claimant's employment.
- 8. Moreover, there was no evidence that in effecting the termination, the Respondent observed the due procedure set out under Section 41. That being the case, the Court finds that the termination was both substantively and procedurally unfair and the Claimant is entitled to compensation.

**Remedies**

- 9. Having found the termination of the Claimant unfair for want of substantive justification and procedural fairness, I award him three (3) months' salary in compensation. In making this award, I have taken into consideration the Claimant's length of service and the Respondent's conduct in the termination exercise. I also award the Claimant one (1) month's salary in lieu of notice as well as salary for the month of December 2014 and 17 days worked in January 2015.
- 10. In the absence of any leave records to counter the Claimant's claim for leave pay, the claim succeeds and is allowed. In addition, there was no evidence that the Claimant was paid house allowance as required under Section 31 of the Employment Act. I therefore award him house allowance at the rate of 15% of his basic pay for the entire period of his employment and adopt the resultant figure of Kshs. 12,650 as the Claimant's salary for purposes of this claim.
- 11. The claims for off days, overtime, public holidays and underpayments were not proved and are dismissed. The Court did not find any basis for the claim for severance pay which also fails and is dismissed.

12. Ultimately I make an award in favour of the Claimant in the following terms:

- a. 3 months' salary in compensation for unfair termination.....Kshs. 37,950
- b. 1 month's salary in lieu of notice.....12,650
- c. Salary for December 2014.....12,650
- d. Salary for 17 days worked in January 2015 (12,650/30x17).....7,168
- e. Leave pay (12,650/30x21+12,650/30x1.75x7).....14,020
- f. House allowance for 19 months & 17 days.....32,285

**Total.....116,723**

13. The Claimant is also entitled to a certificate of service and the costs of this case. The award amount

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

14. These are the orders of the Court.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 15TH DAY OF  
APRIL 2016**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Khalwalwe for the Claimant

No appearance for the Respondent