



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NUMBER 2052 OF 2013**  
**MWARAGU KIMANI.....CLAIMANT**  
**VERSUS**  
**SHENGLI ENGINEERING CONSTRUCTION .....RESPONDENT**

**JUDGMENT**

1. By a memorandum of claim filed on 20<sup>th</sup> December, 2013 the claimant avers that he was employed by the respondent in January, 2011 as a driver at a monthly salary of Kshs.15,000/= (i.e. at Kshs 500/= daily). On 21<sup>st</sup> November, 2012 while on duty driving the respondent's motor vehicle registration number KBJ 290J he got involved in serious accident along Nanyuki -Timau Road.
2. He went on sick leave however on 1<sup>st</sup> May 2013, he claims, the respondent terminated his services. He averred that the purported termination was unlawful and unjustifiable and contrary to his contract of employment. The claimant therefore sought an order for compensation from the Court.
3. The respondent in its memorandum of response admitted that the claimant was its employee at a salary of Kshs.15,000/=. The respondent further admitted that the claimant got involved in an accident and suffered injuries.
4. The respondent further averred that it gave the claimant sick off, paid his salary for 6 months as well as his medical expenses amounting to Kshs.421,678/=.
5. According to the respondent, it notified the claimant of intention to terminate his services and paid him salary in lieu of notice, unpaid leave and service pay.
6. In his oral evidence in Court the claimant reiterated the averments in his claim and additionally stated that prior to his termination the respondent never called him for any disciplinary hearing. He denied being paid while on sick leave.
7. The respondent's witness Ms. Elizabeth Kimani informed the Court that after the accident the claimant was not able to resume duties and that he was paid during the time he was on sick leave.
8. From the evidence it is not contested that the claimant as a result of the accident which took place on 21<sup>st</sup> November 2012 got injured and went on sick leave. He was not able to resume

duties for six months and the respondent became of the view that his services should be terminated on medical grounds. The claimant was employed as a driver and during the accident he broke both his les. According to the respondent, the claimant due to the nature of his injuries could not resume work.

9. A contract of employment just like any contract can be brought to an end in accordance with the provisions either in the contract or as provided by statute.

10. Section 35 of the Employment Act enables parties to a contract of service to terminate the same either by giving notice or paying money equivalent of the notice period. Further, section 43(2) of the Act provides that the reasons for terminating an employee's services are matters that employer at the time of termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee. The respondent became of the view that considering the nature of his injuries, the claimant could not continue working as a driver. The respondent consequently offered to terminate the services of the claimant in accordance with section 35 of the Act.

11. To argue that the claimant was not afforded a hearing prior to termination is pedantic. Not every employment situation requires that before termination a formal hearing must be called and minutes taken. Between the claimant and the respondent, there was no dispute that the claimant as a result of the injuries sustained during the accident, could no longer continue as a driver. It is therefore being overly procedural to require that a formal hearing be called to deliberate over what was obvious to both parties.

12. In the circumstances the Court finds the claim for wrongful dismissal and unfair termination unwarranted and hereby direct that the claimant be paid his dues as set out in his termination letter dated 27<sup>th</sup> May, 2013 if not paid already. Otherwise the claim stands dismissed with no order as to costs.

13. It is so ordered.

**Dated at Nairobi this 15<sup>th</sup> day of April 2016**

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 15<sup>th</sup> day of April 2016**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha Jorum Nelson**

**Judge**