



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

**AT NAIROBI**

**CAUSE NUMBER 343 OF 2014**

**ERIC MWAJUA MALEMBA.....CLAIMANT**

**VERSUS**

**PALM OIL TRANSPORTERS LIMITED.....RESPONDENT**

**JUDGMENT**

1. By a memorandum of claim filed on 2<sup>nd</sup> February, 2015 the claimant averred that he was employed by the respondent as a mechanic at a gross salary of Kshs.7,000/= per month. He worked for the respondent for 4 ½ years.
2. On 24<sup>th</sup> December, 2013, he claims he reported to work and was told his services were no longer needed. According to him his dismissal was therefore actuated by malice and clear breach of the respondent's statutory duty.
3. The respondent on the other hand averred that the claimant was a casual worker whose role was to assist mechanics. The respondent further averred that the claimant only worked for certain period when work was available and was never a regular employee. It was the respondent's contention that the claimant repeatedly absconded duty, was incompetent and lazy hence was justified in terminating him.
4. In his oral testimony in Court the claimant further stated that on 24<sup>th</sup> December, 2013 he was called and asked to return his overall as the respondent wanted to reduce the workforce. He complained that no warning or hearing was given prior to his termination.
5. In cross-examination he stated that he was formally trained as a mechanic. The respondent's witness Mr. Damas Ngui testified that the claimant was a turn man and that his work was to clean vehicles and change tyres when necessary. He denied that the claimant ever worked as a mechanic. He further stated that the claimant was a casual and never went on leave.
6. The respondent's second witness Mr. Kafala stated that the claimant was never employed as a mechanic. It was his evidence that the claimant started training as a mechanic in 2013 but became very unreliable. According to him, the claimant after being paid would occasionally disappear and come back drunk.
7. In his closing submissions, Mr. Gomba for the claimant submitted that the respondent's witness were lying since it was unbelievable that the drivers would be paying turn men while the respondent only paid for them NSSF and NHIF. According to counsel, these were statutory deductions which could only be

paid by an employer. Counsel further submitted that although the respondent claimed it dismissed the claimant for repeatedly absconding duty and incompetence no termination letter was produced. The respondent further failed to produce any warning letters. This according to counsel meant the respondent had a no justifiable reason to terminate the claimant. He thus urged the Court to find that the termination was unfair. Counsel further submitted that the respondent never accorded the claimant a hearing prior to dismissal.

8. Mr. Muganda for the respondent on the other hand submitted that the claimant came with no qualifications hence could not claim he was employed as a mechanic. According to counsel just because the claimant received some training as a mechanic from the respondent did not qualify him as one.

9. Having considered the pleadings, evidence and submissions, by Counsel, the issues to be determined appear to be whether the claimant was a turn man i.e general worker or a mechanic. Second whether whatever status, his services were properly terminated as required by law.

10. Mechanics is a skill that one acquires after formal training and certification after examination. The onus was on the claimant to prove to the required standards that he was a mechanic. He did not do so hence his allegations on this point fail. The Court therefore finds that he was a turn man/general worker.

11. Regarding termination, in terms of reason and procedure, the respondent did not show any reason to justifiable reason why the claimant's services were terminated. Further, no evidence was tendered to show the claimant was afforded a hearing prior to termination. The Court therefore finds that the claimant was unfairly terminated and awards him eight months salary as compensation for unfair termination of services.

12. His claim for leave is not allowed since he did not lead any sufficient evidence to show he asked for leave but was denied by the respondent. Further the claim for underpayment is unsuccessful since it was premised on the fact that the claimant was a mechanic but which he failed to prove.

13. In conclusion the Court awards the claimant the sum of Kshs.56,000/=. The claimant shall further have costs of the suit.

14. This order shall apply mutatis mutandis to cause number 342 of 2014.

15. It is so ordered.

Dated at Nairobi this 27<sup>th</sup> day of May 2016

**Abuodha Jorum Nelson**

**Judge**

Delivered this 27<sup>th</sup> day of May 2016

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha Jorum Nelson**

**Judge**