



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

**AT KERICHO**

**CAUSE NO.8 OF 2015**

**(Before D. K. Marete)**

**JAMES WEKO AMULI.....CLAIMANT**

**VERSUS**

**JAMES FINLAYS KENYA LIMITED.....RESPONDENT**

**JUDGMENT**

This matter was brought to court vide a Memorandum of Claim dated 19th June, 2014. There is no disclosure of an issue in dispute on the face of the claim.

The respondent vide a respondent statement of defence dated 2nd June, 2015 denies the claim and prays that the same be dismissed with costs.

It is the claimant's case that at all material times to this cause, he was an employee of the respondent. He worked between the periods of 15th October, 1999 to 20th March, 2014 when his employment was unlawfully terminated by the respondent. The termination was unlawful for the following reasons;

- a) *The Claimant trade union was not informed of the intention to declare the Claimant redundant.*
- b) *No leave pay was given.*
- c) *No two month's salary in lieu of notice was paid.*
- d) *The required severance pay was not paid.*

It is the claimant's further case that he was grossly underpaid in relation to the Regulation of Wages (General) (Amendment) order in force, worked overtime, rest days and public holidays without pay. He prays as follows;

- a) *2 months pay in lieu notice*

*Basic + House Allowance*

$9.024 + 1,353.6 = 10,377.6 \times 2 \text{ months Kshs.} 20,754$

- b) *Service Gratuity*

$22 \text{ days} \times \text{Years worked} \times \text{Basic} + \text{House Allowance}/26$

$22 \times 14 \text{ years} \times 10,377.6/26 \text{ days} \text{ Kshs.}117,346.70$

c)  $\text{Leave due-}26 \text{ days} \times \text{Years worked} \times \text{Basic} + \text{House allowance}/26$   $26 \times 14 \text{ Years} \times 10,377.6/26$   
days  $\text{Kshs,}145,286.4$

d) *Compensation for unfair termination*

*Gross pay x 12 months*

$10,377.6 \times 12 \text{ months} \qquad \qquad \qquad \text{Kshs.}124,531.2$

**TOTAL CLAIM Kshs.387.164.3**

In the penultimate he prays for;

- a) *A declaration that the termination process as carried out by the Respondent is unlawful and that during his employment with the Respondent, he was not remunerated as required by law.*
- b) *Payment of the sums of money claimed under paragraph 9 above.*
- c) *Costs and interests.*
- d) *Any other relieve the Honourable Court deems fit to grant.*

The respondent's case is that the claimant applied for leave and was supposed to resume on 10th March, 2014 but failed to return to work at the expiry of leave. He did not inform the respondent's management about his whereabouts until 21st March, 2014 when he reported back to work without an explanation as to why he was absent from duty.

It is the respondent's further case that on 28th March, 2015, the claimant's union appealed to the respondent against dismissal but the claimant failed to appear despite a notification of the meeting. He also failed to attend to another scheduled meeting on 29th April, 2014 whereupon the parties on deliberation of the issue agreed to maintain the *status quo*.

It is the respondent's case that in the premises, the termination of the employment of the claimant was lawful and the claim should be dismissed with costs.

The matter came to court variously until the 28th January, 2015 when the parties agreed on a disposal by way of written submissions. The issues in dispute therefore are;

1. Was the termination of the employment of the claimant wrongful, unfair and unlawful?
2. Is the claimant entitled to the relief sought?
3. Who bears the costs of this cause?

The 1st issue for determination is whether the employment of the claimant was wrongful, unfair and unlawful. The parties hold diametrically opposite versions on this. The claimant in his written submissions dated 9th March, 2015 reinstates his claim and raises the following issues for determination;

*"..... the claimant's evidence shows that he was relieved off his duty but was not adequately remunerated as required under the law, noting that he was not issued with a notice of termination nor was he paid hence .... the claimant resorted to get legal redress."*

The respondent in defence also files written submissions dated 29th March, 2016 reiterates his defence and submits a case of procedural fairness on the part of the respondent and again reinforces a case of the validity of dismissal of the claimant. This is as follows;

*“..... under the Employment Act, section 44 (4), any of the following matters may amount to gross misconduct so as to justify the summary dismissal of an employee for lawful cause, but the enumeration of such matters or the decisions of an employer to dismiss an employee summarily under subsection (3) shall not preclude an employer or an employee from respectively alleging or disputing whether the facts giving rise to the same, or whether any other matters not mentioned in this section, constitute justifiable or lawful grounds for the dismissal if-*

- a. *Without leave or other lawful cause, an employee absents himself from the place appointed for the performance of his work;”*

The claimant in his written submissions reiterates his case that the termination of his employment was contrary to Section 40 of the Employment Act. He was relieved of his duties but not adequately enumerated as per the law and no notice of termination was issued. He therefore urges the court to declare the termination unlawful and that he was not remunerated in accordance with the law.

The respondent in her written submissions dated 23rd March, 2016 submits the case of lawful termination of employment in that the claimant was issued with a show cause letter and was taken through a disciplinary process which he ignored and chose to take his own cause in the matter. He was paid his terminal benefits on dismissal and therefore the fallacy of this claim.

The respondent’s case outweighs that of the claimant on the veracity of the evidence adduced. The evidence and case of the respondent overwhelms the claimant’s by far. The claimant does not largely answer the respondent’s case

but insists on his. Inasmuch as this appears to be a case of your word against mine, it all tilts in favour of the respondent. I therefore find a case of lawful termination of the employment of the claimant and hold as such.

On the above finding of the 1st issue for determination, the 2nd issue dissipates into nothingness. The claimant would not be entitled to the relief sought having lost on a case of unlawful termination of employment.

I am therefore inclined to dismiss the claim with orders that each party bears their own cost of the claim. This clears all the issues for determination.

Delivered, dated and signed this 19th day of May 2016.

**D.K.Njagi Marete**

**JUDGE**

Appearances

1. Mr. Rugut instructed by Chepkwony & Company Advocates for the claimant.
2. Mr. Masese instructed by the Federation of Kenya Employers for the respondent.