



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

**AT KERICHO**

**CAUSE NO.145 OF 2015**

**(as consolidated with Cause Nos. 146, 147, & 148 of 2015)**

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

ALICE KEMUNTO MANYURA.....CLAIMANT

VERSUS

JAMES FINLAYS (K) LTD.....RESPONDENT

**JUDGMENT**

This matter was originated by way of a Memorandum of Claim dated 10th June, 2015. It does not disclose the issues in dispute on its face.

The respondent in the statement of defence dated 6th October, 2015 denies the claim and prays that the same be dismissed with costs.

The matter came to court variously until the 26th January, 2016 when the parties agreed on a consolidation of the suits with cause nos. 146 of 2015 and 148 of 2015. On 29th January, 2016 cause no. 147 of 2015 was included in the series for consolidation with this as the lead case.

The claimant's case is that he is a former employee of the respondent having worked from 1999 to 13th June, 2014 when his services were unlawfully terminated. He was not paid his terminal dues. The particulars of unlawfulness of termination are as follows;

- a) *The claimant trade union was not informed of the intention to be dismissed nor was the claimant given an opportunity to be heard.*
- 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 further claims that during his employment, he was grossly underpaid in relation to the Regulation of Wages in (General) (Amendment) Order then in force. He was also not paid for over time, rest days and public holidays. He claims as follows;

a)	<i>2 months pay in lieu notice</i>	
	<i>Basic + House Allowance</i>	<i>Kshs.20,754</i>
	$9024 + 1353 \times 2 \text{ Months}$	
b)	<i>Service Gratuity-</i>	
	$22 \text{ days} \times \text{Years worked} \times \text{Basic}/30 \text{ days}$	
	$22 \text{ days} \times 15 \text{ years} \times 9,024/30$	<i>Kshs.99,264</i>
c)	<i>Leave Dues</i>	
	$26 \text{ days} \times \text{Years worked} \times \text{Basic} + \text{House allowance}/26 \text{ days}$	
	$26 \text{ days} \times 15 \text{ Years} \times 10,377/26 \text{ days}$	<i>Kshs.155,655</i>
d)	<i>Compensation for unfair termination</i>	
	$10,377 \times 12 \text{ months}$	<i>Kshs.124,524</i>
	<b>TOTAL CLAIM</b>	<b><i>Kshs.400,197</i></b>

In the penultimate he prays as follows;

- 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 may deem fit to grant.*

The respondent's case is that the claimant is a former employee as tea plucker and was assigned employee No.3214 62. The respondent's further case is that he is in the business of tea and has modes of so doing. This is set out as follows;

3. *For several years the company has undertaken plucking tea using different modes each with different set task. The modes of plucking tea are hand plucking, shear plucking and machine tea harvesting. These modes have been adopted in company as and been the practice for a long period of time now.*

4. *The management reserves the right to allocate tasks and this has been the practice after which the same is communicated to the employees on the changes the management has adopted. The decision to reduce tasks is informed by the management when the crops are low due to unfavourable weather conditions. The shear plucking task is adjusted upwards when the weather conditions are favourable and the crop has improved.*

It is the respondent's further case that on 29th May, 2014, the respondent made a decision to allocate some shear plucking to 41 employees who included the claimant. They were all briefed but the claimant and 12 others defied his brief and instructions. On 5th June, 2014 at 9.00 hours, the claimant reported on duty and was assigned the duty of shear plucking but she was spotted hand plucking in defiance. The estate manager took time to explain to her the terms and conditions of employment and the consequences of indiscipline. The supervisor on shear plucking instructed the claimant to desist from hand plucking but

she again defied instructions and authority.

The claimant continued her defiance, neglect and also indulged in absconding of duty until the 13th June, 2014, then she was subjected to a disciplinary committee meeting after which she was dismissed from employment. This meeting was held in the presence of a union shop steward who even appealed against the decision of dismissal but all this time the claimant would not offer a credible defence for her inaction.

It is the respondent's other case that the dismissal of the claimant was summary and therefore did not warrant any notice and further that she was paid for untaken leave thus frustrating a claim to this extent.

The issues for determination 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 termination of the employment of the claimant by the respondent was wrongful, unfair and unlawful. The parties hold diametrically opposed positions on this. The claimant sustains and submits a case of wrongful, unfair and unlawful termination of employment whereas the respondent denies this.

The claimant in his written submissions dated 9th February, 2016 reiterates his case that the termination of his employment was contrary to S. 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 18th February, 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 where she was unable to offer a substantive defence to the issues raised by the respondent.

She was paid for untaken leave. The other limbs of the claim are untenable in law and therefore the fallacy of this claim.

The respondent's case outweighs that of the claimant's on the veracity of the evidence adduced. There is ample evidence of substantive and procedural fairness in dealing with the termination of employment of the claimant. 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 17<sup>th</sup> 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.