



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT MOMBASA**  
**CAUSE NUMBER 418 OF 2015**

**BETWEEN**

**1. PHILOMENA MUTUA NDINDA**

**2. JENIFFER KATHURE.....CLAIMANTS**

**VERSUS**

**MEGA GARMENT INDUSTRIES KENYA [EPZ] LIMITED.....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Mr. Mwangangi Advocate instructed by Otieno Asewe & Company Advocates for the Claimants*

*George M. Kabebe Advocate for the Respondent absent*

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**ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION**

**AWARD**

**[Rule 27 [1] [a] of the Industrial Court [Procedure] Rules 2010]**

1. The two Claimants, Ms. Ndinda and Ms. Kathure filed their joint Statement of Claim on the 29<sup>th</sup> June 2015. They state they were employed by the Respondent on 19<sup>th</sup> August 2012 and 3<sup>rd</sup> January 2013 respectively. Both were employed as Quality Checkers. They lost their jobs on 12<sup>th</sup> May 2015 through summary dismissal. They dispute the correctness of their former Employer's decision. They allege they were treated unfairly and unlawfully. They seek the following prayers against the Respondent:-

- a. 1 month salary in lieu of notice.
- b. Annual leave pay.
- c. 2 months' salaries for the 2 months left to the end of their contracts.

d. 12 months' salary in compensation for unfair termination.

In total the monetary prayers are computed at Kshs. 423,216. The Claimant's also seek a declaration that termination was unfair and unlawful; costs; interest; and any other suitable relief.

2. The Respondent filed its Statement of Response on the 10<sup>th</sup> August 2015. It concedes to have employed the Claimants. It also concedes to have terminated their contracts of employment. Termination was fair and lawful. The Claimants were given the chance to show cause why disciplinary action should not be taken against them. They failed to show cause. The Respondent asks the Court to dismiss the Claim with costs to the Respondent.

3. The hearing date was set for 16<sup>th</sup> February 2016, in the presence of the Parties' Advocates, on the 4<sup>th</sup> September 2015. The Respondent and its Advocates did not attend Court during the hearing, and the Claimants gave evidence, and closed their respective cases, on the 16<sup>th</sup> February 2016.

4. Ndinda testified she was employed as Quality Checker, on the 19<sup>th</sup> August 2012. Her last salary was Kshs. 11, 248 per month. She assessed garment quality. She was advised by the Employer to go home as work had diminished. She was to report later. She complied, went home and reported back later. She was taken in circles on reporting back. In the end the Respondent issued her the dismissal letter dated 12<sup>th</sup> May 2015. The reasons justifying the Employer's decision are stated in the letter to be that the Claimant's performance and character had failed to improve. The 1<sup>st</sup> Claimant states these reasons were not valid. She was told work had diminished before being slammed with the summary dismissal letter. She was routinely placed on 6 month's contracts, the last which was dated 5<sup>th</sup> January 2015. She prays the Court to assist her in terms of her Claim.

5. Kathure was employed as Supervisor, Quality Checker. She was employed on the 3<sup>rd</sup> January 2013, and dismissed on the 12<sup>th</sup> May 2015. She earned a monthly salary of Kshs. 14,500. She was advised work had diminished. She was directed to go home and report back later. She refused to leave and was told she then would serve as a plain Quality Checker, on a lower salary of Kshs. 11,248. She rejected demotion and lowered salary. She was then dismissed. She prays the Court to grant her Claim.

*The Court Finds:-*

6. The Respondent did not take the opportunity to adduce evidence to contradict the Claimants, and substantiate its Statement of Response. It is the responsibility of the Employer under Section 41, 43 and 45, to show termination is based on valid and fair grounds, and is carried out fairly.

7. According to the Statement of Response, termination was fair, and based on valid reason. The reason or reasons are not given in the Statement of Response. The Respondent states the Claimants were given a chance to show cause why disciplinary action should not be taken against them. It is said they failed to show cause. Nowhere in the Statement of Response is it suggested what employment offence the Claimants were being asked to respond to.

8. In their evidence, the Claimants allude to redundancy as the ostensible ground for termination. They were told work had diminished. They were asked to take a short break, and report back later. The 1<sup>st</sup> Claimant complied, took the break, but when she returned, she was moved in circles before eventually being issued the dismissal letter. The 2<sup>nd</sup> Claimant was given similar advice, declined to take the short break, and was offered a demotion and lowered salary. She rejected these and was dismissed.

9. The Respondent stated termination was on the ground that the Claimants had failed to perform their duties as expected of them, by the Respondent. It was said of the 1<sup>st</sup> Claimant somewhat bizarrely, that she had failed to improve both performance and character. These allegations were not tested, through a hearing given to the Claimants, under Section 41 of the Employment Act. They were not substantiated. There was no evidence of poor performance shown by the Respondent to justify its decision. The

allegation about the 1<sup>st</sup> Claimant's failure to improve her character was obscure. There were no valid grounds justifying termination.

10. The Respondent appears to have encountered financial constraints in running its business. It advised the Claimants to leave or take pay cut. Rather than declare it was encountered with a redundancy situation, and invoke Section 40 of the Employment Act, the Respondent resorted to the murkier termination route of summary dismissal based on invalid termination grounds. Whether looked at as termination based on redundancy or summary dismissal, the decision by the Respondent did not conform with the law as laid down in Sections 40, 41, 43 and 45 of the Employment Act 2007.

**11. It is declared termination was unfair. The Claimants are granted 6 months' salary each, in compensation for unfair termination, under Section 49 of the Employment Act, and Section 12 of the Employment and Labour Relations Court Act.**

**12. They merit and are granted 1 month salary each, in lieu of notice.**

13. The claims for unpaid leave are unchallenged. The Respondent did not file the annual leave records, to discount what is claimed by the two Ladies. **Annual leave pay is granted as prayed.**

14. The claim for anticipated salaries, for the balance of the two months left in the contracts is rejected. The Claimants have been granted the prayer for compensation. In doing this, the Court has taken into account Section 49 [4] [e] and [f] of the Employment Act. The Employee's length of service with the Employer, and the reasonable expectation of two more months the Employees expected to go on working, have been taken into account in granting them compensation at 6 months' salary. To grant them anticipated salaries of two months, would duplicate the remedy of compensation, which aims at redressing economic injury. **This prayer is declined.**

**15. As the Respondent has shown little interest in responding to the Claim, the Claimants are granted costs, and interest at 14% per annum from the date of delivery of the Award, until payment is made in full.**

IN SUM, IT IS ORDERED:-

**[a] It is declared termination was unfair.**

**[b] The Respondent shall pay to the 1<sup>st</sup> Claimant 1 month salary in lieu of notice at Kshs. 11,248; annual leave pay at Kshs. 22,496; and 6 months' salary in compensation for unfair termination at Kshs. 67,488- total Kshs. 101,232.**

**[c] The Respondent shall pay to the 2<sup>nd</sup> Claimant 1 month salary in lieu of notice at Kshs. 14,500; annual leave pay at Kshs. 14,500; and 6 months' salary in compensation for unfair termination at Kshs. 87,000 – total Kshs. 116,000.**

**[d] The total sum of Kshs. 217,232 shall be paid by the Respondent to the Claimants within 30 days of delivery of this Award.**

**[e] Costs to the Claimants.**

**[e] Interest granted at 14% per annum from the date of delivery of this Award.**

Dated and delivered at Mombasa this 27<sup>th</sup> day of June, 2016

James Rika

Judge