



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

**AT NAIROBI**

**CAUSE NO. 318 OF 2015**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 13<sup>th</sup> June 2016)**

**JUSTINE ONWOYO AMONG'A.....CLAIMANT**

**VERSUS**

**MOUNT KENYA UNIVERSITY.....RESPONDENT**

**JUDGMENT**

1. The Claimant filed his Memorandum of Claim on 05.03.2015, seeking damages for unlawful termination. The Claimant states that he was employed by the Respondent on 7<sup>th</sup> January, 2014, as an Associate Faculty Lecturer earning a salary of Shs. 18,000 per month. He states that he served the Respondent with diligence and utmost loyalty until 19<sup>th</sup> May, 2014, when his services were unfairly terminated after being accused of being absent from work.

2. It is the Claimant's contention that he had notified his line manager one Mr. Karuri Thiong'o, that he would miss some lectures from 10<sup>th</sup> -14<sup>th</sup> February, 2014, as he was planning for his wedding which was to take place on 4<sup>th</sup> March, 2014. He was advised to arrange for make-up classes so as to complete the syllabus before end of semester exams which he did.

3. He further states that on 24<sup>th</sup> February, 2014, he went to meet service providers during the morning hours before his 1100-1400hrs lecture but was running later. He called his line manager to register his apologies and also called the Class representative and gave the class an assignment. Later that week the Claimant states that he was informed by his line manager that some students had complained of missed classes. He explained the reasons for missing classes and the steps he had taken to make up for the missed classes.

4. The Claimant also states that at the start of the MAY/AUG2014 Semester he was offered three units to teach. He didn't attend the first lecture on 12<sup>th</sup> May, 2014, as it was registration day but he attended lectures on 13<sup>th</sup> and 16<sup>th</sup> May, 2014. He was later dismissed by the line manager on grounds that the complaints from the students in the previous semester had brought the administration to that particular conclusion. He alleges that he was paid half salary for one of the units he was teaching but was not paid at all for the other units.

5. It is the Claimants case that he was not given a hearing before dismissal nor was he given a notice for termination. He states that he was verbally summarily dismissed from a contract that was to run for a

period of two years as indicated on the letter of appointment annexed to the Memorandum of Claim as JOA-001.

6. He prays for judgment against the Respondent for one month's pay in lieu of notice, salary arrears for Jan/Apr 2014 3 units, certificate of service and compensation for unfair termination.

7. The Respondent did not enter appearance and the matter proceeded undefended.

8. Having considered evidence of the Claimant, I do find that there could have been valid reasons to dismiss the Claimant from duty but he was supposed to be given due process to explain himself as envisaged under Section 41 of Employment Act, 2007 which states:

**“(1). Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.**

**(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44 (3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make”.**

9. The Claimant was condemned unheard and I find his dismissal unfair and unjustified under Section 45(2) of Employment Act which states as follows:

**2. A termination of employment by an employer is unfair if the employer fails to prove:**

- a. **that the reason for the termination is valid;**
- b. **that the reason for the termination is a fair reason:-**
  - i. **related to the employee's conduct, capacity or compatibility; or**
  - ii. **based on the operational requirements of the employer; and**
- c. **that the employment was terminated in accordance with fair procedure**

10. I therefore find for Claimant and enter judgment for him as follows:

- 1. **1 months salary in lieu of notice = 18,000/=.**
- 2. **Salary arrears for January/April 2014 3 units = 135,000/=**
- 3. **6 months salary as compensation for unfair termination – 18,000 x 6 – 108,000/=**

**TOTAL = 261,000/=**

- 4. **Issuance of Certificate of Service.**
- 5. **The Respondent will meet costs of this suit.**

Read in open Court this 13<sup>th</sup> day of June, 2016.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Claimant in person – Present

No appearance for Respondent