



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

**AT KERICHO**

**CAUSE NO. 217 OF 2015**

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

**BRAMWEL AIRO IMBUDILA.....CLAIMANT**

**VERSUS**

**THE NOBLE CONFERENCE**

**CENTRE LIMITED.....RESPONDENT**

**JUDGEMENT**

This matter was originated by way of a Statement of Claim dated 7th July, 2015.

The issue in dispute is therein cited as;

*Wrongful/unfair/summary dismissal and unlawful termination of the claimant Bramwel Airo Imbudila being aggrieved by such wrongful, unfair and unlawful dismissal files the claim herein.*

The respondent in a Respondent's Defence dated the 30th November, 2016 denies the claim and prays that the same be dismissed with costs.

The claimant's case is that at all material times to this claim, he was an employee of the respondent as a gardener. He earned a salary of Kshs. 8,500.00 and was on permanent and pensionable terms.

The claimant's further case is that on 16th April, 2015 the respondent wrote to him and terminated his services without notice and to his detriment. This termination was tainted with illegality, was malicious and a breach of the terms and, conditions of employment and should be nullified. This is as follows;

- a) *The termination was contrary to the Employment Act 2007 and the Constitution of Kenya 2010.*
- b) *The claimant was not afforded sufficient opportunity to defend himself.*
- c) *The decision to dismiss the claimant from service was arbitrary.*
- d) *The respondent did not observe the rules of natural justice when they reached the decision to dismiss the claimant.*

The claimant avers that he was not paid his terminal dues on termination and therefore the unfairness and

unlawfulness of such termination. He prays for;

*a) An award as per the assessment of the Labour Officer dated 6th July*

*2015.*

*b) A declaration that the Claimant's employment services with the respondent were wrongly terminated, unlawfully summarily dismissed and or unfairly.*

*c) The general damages suffered as a result of the respondent's actions.*

*d) An order that the claimant was being underpaid by the respondent and therefore be paid lawfully all the outstanding appropriate dues.*

*e) Cost of this claim and interest.*

*f) Any other or further relief that this honourable court may deem fit and just to grant.*

The respondent's case is that the claimant was not employed as a Chef in 2009.

She however admits dismissal of the claimant on grounds of gross misconduct after disciplinary proceedings. The claimant appealed and was requested to do this in writing. He was subjected to a show cause and disciplinary proceedings ending up with termination. This was communicated and he was issued with a certificate of service. She therefore prays that this cause be dismissed with costs.

The matter came to court severally until the 2nd June, 2016 when it was agreed on a disposal by way of written submissions.

The issues for determination are;

1. Was the termination of the employment of the claimant was 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 was wrongful, unfair and unlawful. The claimant in his written submissions reiterates his case and sets out a case of unlawful termination of employment.

The claimant disclaims the documentation annexed by the respondent in defence as doctored and inauthentic. In as much, the minutes dated 4th May 2015 and filed in court on 18th April 2015 clearly indicates that the claimant was firstly dismissed from employment and thereafter a show cause meeting held. It is the claimant's submission that this was unprocedural for being a reversal of the legal process whereby an employee is first issued with a show cause notes before termination of services.

Again, the claimant takes issue and disclaims authenticity of payslips annexed by

the respondent in support of her case. It is his submission that the payslips annexed by himself at pages 1015 of the claim are signed by both parties whereas those of the respondent are single signed and a forgery to perpetuate her case. He therefore submits a case of no valid termination of employment and seeks to rely on the authority of **Alfonse Achanga Mwachanya vs Operation 680 Limited [2013] eKLR** where the court summarised the legal fairness requirements set in section 41 of the Employment Act. Again, the Case of **Kabenge Mugo vs Syngenta East Africa Limited, Industrial Cause Number 1476 of 2011** the court held that;

*“..The Kenyan employment laws no longer accept the “at will doctrine” whereby an employer can fire employees at will, for any reason and or no reason.”*

The respondent on the other hand submits a case of lawful termination of employment. She submits compliance with procedural aspects of lawful termination and further reverts the burden of proof of unlawful termination to the claimant as provided by section 47 (5) of the Employment Act, 2007 as follows;

*“For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.”*

The respondent however, does not address the claimant’s case of a concocted defence and particularly the issue of authenticity and validity of the minutes of the disciplinary proceedings dated 4th May 2015 and the annexed payslips in the respondent’s further list of documents dated 8th April, 2016. This casts a shadow on the defence case.

The respondent throughout the defence insist that the claimant was terminated for gross misconduct, insubordination, and uncouth behaviour. In her list of documents dated 30th November, 2015 the respondent annexes the following documents;

1. Two warning letters.
2. Leave application forms.
3. Claimant’s letter of application for salary increment.
4. Letter of salary increment for 2014.
5. Letter of termination.
6. Claimant’s letter of denial of indiscipline as a ground for termination.

Curiously, the claimant does not also address the warning letters adduced by the respondent. These letters come out as a clear demonstration of the conduct of the claimant at his place of work. They also cast a shadow on the veracity of the claim. Yet, he remains silent on these.

In this kind of scenario, one is forced to decide and determine the matter on a balance of probabilities. This is because the parties present their cases in a manner that amounts to: it is your case against mine. On this scale, the matter tilts in favour of the respondent. The respondent’s case comes out finer and more probable than that of the claimant. I therefore find a case of lawful termination of employment and hold as such.

On a case of lawful termination of employment, the claimant is not entitled to the relief sought. And this answers the 2nd issue for determination.

I am therefore inclined to dismiss the claim with costs to the respondent. And this clears all the issues for determination.

Delivered, dated and signed this 19th day of July

2016.

**D.K.Njagi Marete**

## **JUDGE**

### Appearances

1. Mr Wanyonyi instructed by Kimaru Kiplagat & Company Advocates for the claimant
2. Mr. Mukabane instructed by Nyairo & company Advocates for the respondent.