



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

**CAUSE NO. 475 OF 2014**

**DENNIS MURITHI**

**CLAIMANT**

**v**

**ELDORET MATTRESS LIMITED**

**1ST RESPONDENT**

**DANIEL NGUGI t/a KAMTINGA SERVICES LTD**

**2ND RESPONDENT**

**JUDGMENT**

1. Dennis Murithi (Claimant) sued Eldoret Mattress Ltd (1<sup>st</sup> Respondent) and Daniel Ngugi t/a Kamtinga Services Ltd (2<sup>nd</sup> Respondent) on 2 October 2014 and he alleged unlawful termination of employment.
2. The Respondents filed a joint Reply to Memorandum of Claim on 8 December 2014.
3. On 5 December 2014, the Court fixed the Cause for hearing for 22 October 2015, and directed the Claimant to serve a hearing notice.
4. When the Cause was called out on the scheduled hearing date, the Respondents sought and got an adjournment on the ground that their witness was not available, as he had been sent on other duties.
5. Though the Respondents were directed to pay adjournment fees, there is nothing on record to show that the fees were paid.
6. The Cause next came for hearing on 16 February 2016, the Respondents again sought for an adjournment which was declined (reasons for declining the adjournment are on record).
7. The Claimant opted to rely on the pleadings and submissions to be filed and he filed his submissions on 29 February 2016. The Respondents' submissions were not on file by 15 April 2016 as directed.
8. The Court has considered the pleadings and submissions and identifies the issues for determination as, *whether the termination of the Claimant's employment was unfair, and if so, appropriate remedies.*

**Whether termination of employment was unfair**

9. The 1<sup>st</sup> Respondent issued to the Claimant a letter dated 1 June 2014 and referenced *Notice of Termination of Employment.*

10. The reason(s) given in the letter were *reasons beyond us and financial difficulties*.

11. It can legally be concluded that the termination of employment was involuntary on the part of the Claimant. It was not because of any *misconduct, poor performance or physical incapacity* on his part. This was a case of redundancy.

12. Section 40 of the Employment Act, 2007 has set out certain conditions an employer should comply with before bringing a contractual relationship to an end on account of redundancy.

13. Save that the Claimant was informed 1 month in advance in writing, there is nothing on record to suggest how he was selected for redundancy; that the local Labour Officer was notified or that severance pay and other dues were paid.

14. In this regard, the Court finds that the termination of the Claimant's employment was procedurally tainted and therefore unfair.

15. Further, there is nothing on record to suggest that the redundancy was for genuine operational requirements in terms of section 45(2)(b)(ii) of the Employment Act, 2007.

16. The Court therefore finds the same substantively unfair.

### **Appropriate remedies**

#### ***1 month pay in lieu of notice***

17. Because the Claimant was given 1 month notice, he is not entitled to pay in lieu of notice (it appears though that he was paid Kshs 12,000/- by the 2<sup>nd</sup> Respondent on account of notice). **Overtime**

18. No evidential basis for overtime in terms of working hours agreed or set by law was placed before Court and the Court declines this head of claim.

#### ***Severance pay***

19. The Claimant sought Kshs 18,300/- on account of severance pay. Legally, he is entitled to *severance pay* but the Court notes that he was paid *service pay* by the 2<sup>nd</sup> Respondent.

20. The Court therefore declines to make an award under this head so as not to unjustly enrich the Claimant (in law *severance* and *service pay* are distinct, a distinction not understood by many ordinary employers).

#### ***Compensation***

21. The Claimant served the Respondents for about 3 years. At time of separation, he was earning Kshs 12,000/-.

22. Considering the length of service, the Court is of the view that the equivalent of 4 months gross wages would be fair compensation.

### **Conclusion and Orders**

23. The Court finds and holds that the termination of the Claimant's employment on account of redundancy was unfair and awards him and orders the Respondents to pay him

(a) Compensation Kshs 48,000/-

24. Claimant to have costs.

**Delivered, dated and signed in Nakuru on this 15<sup>th</sup> day of July 2016.**

**Radido Stephen**

**Judge**

**Apperances**

For Claimant Mr. Alumasa instructed by Chepkwony & Co. Advocates

For Respondent Ms. Nasimiyu instructed by Gicheru & Co. Advocates

Court Assistant Nixon