



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

**AT NAIROBI**

**CAUSE NUMBER 589 OF 2014**

**ERUSTUS MULU KIMANZI.....CLAIMANT**

**VERSUS**

**PARLIAMENTARY SERVICE COMMISSION.....RESPONDENT**

**JUDGMENT**

1. The claimant brought this action against the respondent complaining that his services were wrongfully and unfairly terminated. He therefore sought compensation from the Court.
2. Facts of the case as pleaded by the claimant are that he was initially employed by the respondent on 14<sup>th</sup> April, 2002 as temporary driver. He was subsequently upgraded to and appointed on probation as a fixed term contract driver grade 111. On 4<sup>th</sup> March, 2008 he got interdicted after getting involved in an accident. The claimant however appealed against the interdiction and was reinstated back to his job. On 1<sup>st</sup> December, 2008 the claimant was suspended from duty pending deliberation over his disciplinary case. The claimant's services were eventually terminated on 29<sup>th</sup> April, 2010.
3. The claimant complained that prior to the termination he was not officially reprimanded or placed through a disciplinary program.
4. The respondent on the other hand justified the dismissing contending that the claimant had a history of indiscipline and causing accidents with vehicles he was assigned to drive.
5. According to the respondent, on 23<sup>rd</sup> October, 2002 the then Deputy Speaker wrote to the Clerk of the National Assembly recommending the termination of the claimant's services. The Deputy Speaker complained that the claimant lacked discipline and that every effort to correct his misdeeds had failed. The claimant's employment was subsequently terminated on 23<sup>rd</sup> October, 2002. However on 4<sup>th</sup> November, 2002 he was pardoned and reinstated on humanitarian grounds. The claimant was later on 17<sup>th</sup> November, 2002 hired as a fixed term contract driver to last for the life of the 9<sup>th</sup> Parliament.
6. By a letter dated 12<sup>th</sup> July, 2004 the claimant informed the Clerk of the National Assembly that he had been involved in an accident involving motor vehicle GKA852F Mercedes Benz, along Outering Road as a result of which a pedestrian died. The account given by the claimant was found to be contradictory and misleading as a result, by a letter dated 23<sup>rd</sup> July, 2004 the claimant was interdicted and asked to show cause why he ought not to be summarily dismissed. He responded and asked for leniency. His services were terminated on November, 2004. Once more the claimant appealed and by a letter dated

9<sup>th</sup> August, 2005 the claimant was reengaged on probationary terms.

7. On 4<sup>th</sup> March, 2008 the claimant was interdicted for the third time by the Clerk of the National Assembly following a report made to him by the transport officer regarding yet another accident involving the respondent's vehicle on 1<sup>st</sup> March, 2008.

8. The claimant was asked to show cause why he should not be summarily dismissed and did so via a letter dated 13<sup>th</sup> March, 2008 in which he purported to have been with the vehicle involved with full authority of the Government Chief Whip. These allegations were denied by the Chief Whip. On 1<sup>st</sup> December, 2008, the claimant was suspended pending investigations of his case and on 22<sup>nd</sup> April, 2010 the claimant's services were terminated.

9. Mr. Ongicho for the claimant submitted that the claimant was not heard before dismissal contrary to regulation 21, 23 and 78 of the Respondent's Code of Regulation. According to Counsel the evidence contained in the affidavit of Douglas Ng'ang'a did not disclose when the claimant was heard. Counsel further submitted that the termination was unfair and unjustified as there was no reason given in the termination letter. Further the termination letter did not specify which period was considered and that the records of such period were not filed in Court.

10. Ms. Lumallas for the respondent submitted that reasons for terminating the claimant were valid, justifiable and sound in the circumstances since the claimant breached the code of conduct. According to Counsel, the claimant knew it was illegal and unacceptable to drive or use Government vehicles without permission. The claimant further gave false testimony concerning an accident he was involved in. According to Ms. Lumallas the claimant was repeatedly careless with government property in his possession by having recurring accidents and failing to give truthful testimony.

11. Termination from employment must be for valid and justifiable reasons. Further in carrying out the process, the employee must be accorded a fair hearing. The hearing need not take the form of a Court trial it can be through correspondence provided the employee is given adequate time to respond to the allegations.

12. Further employment relationship is based on trust and confidence. Once these two essential elements are eroded, the relationship cannot continue. In the case of **R vs. Immigration Appeal Tribunal ex parte Jones** relied on by Ms. Lumallas, the Court stated that hearing does not necessarily have to be oral in all cases. Decision making bodies other than Courts are masters of their own procedure provided that they achieve the degree of fairness appropriate to their task. Whether a hearing should be oral would depend upon the subject matter and circumstances of a particular case and the nature of the decision to be made. This reasoning was followed in the case of **Republic v. Judicial Service Commission & Another (2013) eKLR.**

13. The Court has reviewed the circumstances that led to the claimant's termination as pleaded and highlighted in the submission by Counsel for either party and is of the view that the respondent was justified in terminating the claimant's services. Like the proverbial cat, the claimant was terminated twice before the present one, the subject of this suit. The number of accidents the claimant got involved in were of concern and his attempt to falsify the account of the circumstances under which they took place portrayed him as a reckless person who did not respect his employment with the respondent.

14. The Court therefore finds the claim as filed unmerited and dismisses the same with costs.

15. It is so ordered.

Dated at Nairobi this 2<sup>nd</sup> day of September 2016

**Abuodha Jorum Nelson**

**Judge**

Delivered this 2<sup>nd</sup> day of September 2016

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha Jorum Nelson**

**Judge**