



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 459 OF 2012**

**KENYA GAME HUNTING AND SAFARIS WORKERS UNION.....CLAIMANT**

**VERSUS**

**PAYLESS CAR HIRE, TOUR AND RENT A CAR.....RESPONDENT**

**JUDGMENT**

1. The claimant union brought this claim on behalf of the three grievants namely James Gitau, Alex Katiku and Julius Okelo. James was dismissed summarily due to absence from work without permission. According to him however, he was absent due to illness. He produced a letter from a doctor to that effect. Julius and Alex were terminated on account of Redundancy and an offer made to pay them their terminal dues upon clearing with the respondent.
2. Termination of employment is an essential element of a contract of service however it has to be done in accordance with the contract itself, collective bargaining agreement where applicable and the Employment Act and Laws.
3. The decision to dismiss is discretionary on the part of the employer. The test is usually that of a reasonable employer. That is to say for reasons at hand would he dismiss? If the answer is yes, then the dismissal would be upheld.
4. The claimant herein had a reasonable cause to be absent from work. That is to say, he was unwell and he produced a doctor's letter to that effect. To dismiss him despite the evidence was therefore unreasonable hence unfair. The Court therefore awards him as follows:-
  - a. One month's pay in lieu of notice.
  - b. 7 days worked in February 2007.
  - c. Eight months salary for unfair termination of services.
5. Concerning Alex and Julius, they were terminated on account of redundancy. This Court cannot stop a redundancy where the same is done in accordance with the law. The claimant union does not seem to dispute that the redundancy was carried out according to law. All it seems to be complaining about is that the redundancy led to loss of employment for Alex and Julius. The Court has perused the letter of termination for the two grievants and is of the view that the same complied with the law.
6. The Court therefore orders that the grievants be paid their redundancy dues as per their termination

letters if not paid already. The claim against the respondent by Alex and Julius is therefore found without merit and is hereby dismissed with no order as to costs.

7. 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**