



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT MOMBASA**  
**CAUSE NO.275 OF 2015**  
**DIANA KITEME.....CLAIMANT**  
**VS**  
**JESEPHINE MUTUKU.....RESPONDENT**  
**JUDGMENT**

**Introduction**

1. This is a claim for terminal dues plus compensation for unfair termination of the claimant's contract of employment by the respondent on 1.5.2014. Despite being served with summons and Hearing Notice, the respondent never filed any defence and never participated in proceedings herein. The suit was heard on 13.7.2016 when the claimant testified as Cw1 and thereafter filed written submissions.

**Claimant's case**

2. Cw1 testified that she was employed by the respondent on 22.1.2014 as a Secretary. That she worked well until April 2014 when she fell sick and was given a sick leave until 1.5.2014 when she was to report back to work. By the time she went for the sick leave she had not been paid her salary for March 2014 which was kshs.6,000.

3. Cw1 went on to state that when she reported back to work on 1.5.2014, the respondent told her to go away and promised to pay her salary for March and April 2014. That the termination was done without any prior notice.

4. The claimant was not paid her salary for the said two months and as such she reported the matter to the Chief Kisauni Location and upon being summoned, the respondent signed an agreement dated 4.7.2014 admitting of kshs.11,000 as the net salary for the claimant after deducting kshs.1,000 for a lost book. That, again the respondent defaulted and the claimant brought this suit claiming one month salary in lieu of Notice, salary for March and April 2014, Compensation for unfair termination, Certificate of Service and Costs.

**Analysis and Determination**

5. There is no dispute that the claimant was employed by the respondent as a secretary from 22.2014 until 1.5.2014 when her services were terminated without any prior notice. The issues for determination are:-

**a. Whether the termination was unfair and unlawful.**

**b. Whether the reliefs sought should issue.**

**Unfair termination**

6. The claimant's undisputed evidence is that she went for a sick leave and when she reported back to work she was terminated without any prior notice or hearing. The respondent has however not given any evidence to rebut the claimant's evidence. She has therefore not discharged her burden of proof under Section 45 of the Employment Act (EA). The said provision deems termination of employment of any employee to be unfair if the employer fails to prove that the termination was founded on a valid and fair reason and that it was done after following a fair procedure. Consequently, I find and hold that the claimant's services were terminated unfairly.

**Reliefs**

7. In view of the foregoing, I award the claimant ksh 6,000 being one month salary as compensation for unfair termination under section 49 of the Employment Act. I also award the claimant kshs.11,000 being salary for March and April 2014 as per the agreement dated 21.7.2014 signed before the Chief Kisauni Location. She will also get Certificate of Service as prayed.

**Disposition**

8. For the reasons stated above, I enter judgment for the claimant in the sum of **kshs.23,000** plus costs and interest. The claimant will also have Certificate of Service.

**Signed, dated and delivered this 18<sup>th</sup> November 2016.**

**ONESMUS MAKAU**

**JUDGE**