



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 582 OF 2014**

**WILFRED KIPCHIRCHIR ROTICH**

**CLAIMANT**

v

**METKEI MULTI-PURPOSE CO LTD**

**RESPONDENT**

**JUDGMENT**

1. The delivery of this judgment has been brought forward because the Court will not sit on 4 November 2016 due to an official event.
2. For determination is the question *whether the summary dismissal of Wilfred Kipchirchir Rotich (Claimant) on 10 February 2014 was unfair and if so, appropriate remedies.*
3. Metkei Multi-Purpose Company Ltd (Respondent) filed a Response on 19 December 2014 and the Cause was initially heard on 1 December 2015 and judgment reserved to 1 April 2016, but pursuant to a consent between the parties, the Court directed that the hearing of the Cause start *de novo* and the hearing proceeded on 6 October 2016.
4. The Claimant testified while the Respondent called one of its Managers.
5. The Claimant filed his submissions on 14 October 2016, while the Respondent's submissions were filed on 25 October 2016.
6. The Court has considered the pleadings, evidence and submissions.

**The applicable law**

7. The law applicable to unfair termination of employment and/or wrongful dismissal is found in section 35 of the Employment Act, 2007 (written notice of termination); section 41 of the Act (procedural fairness through a hearing); section 43 of the Act (employer proving the reasons for termination); section 45 ( employer proving the reasons as valid and fair) and section 47(5) which contemplates an employee proving that an unfair termination of employment occurred before the employer is called upon to justify the termination of employment.
8. Section 47(5) of the Employment Act, 2007 essentially sets the procedural legal and evidentiary standards to be discharged at the onset of proceedings.
9. In a case where an employee/Claimant fails to discharge the low threshold burden of showing there was an unfair termination of employment, a court would of necessity drop the inquiry without calling upon the Respondent to discharge the statutory burden placed upon an employer.

## **Whether dismissal was unfair**

10. The Claimant's pleaded case was that the Respondent did not comply with the statutory requirements as to procedural fairness as envisaged under section 41 of the Employment Act, 2007, in that he was not informed of any misconduct and that he was not afforded an opportunity to be heard in the presence of a union representative.

11. However, during oral testimony, the Claimant did not give any evidence or make reference to the plea that he was not informed of a misconduct or that he was not afforded an opportunity to be heard in the presence of a union official.

12. At the onset therefore, the Court finds that Claimant did not discharge the burden placed on him by section 47(5) of the Employment Act, 2007. His case was prosecuted in a most casual manner.

13. That would have been the end of the inquiry except that the Respondent produced a show cause notice dated 10 December 2013 which required the Claimant to offer explanations on an accident which occurred on 9 December 2013, but to which the Claimant failed to respond, and an invitation dated 31 January 2014 asking the Claimant to attend a disciplinary hearing which he failed to attend.

14. The Court has no reason not to believe the Respondent's Manager who testified that he issued the notices to the Claimant.

15. In the view of the Court, and putting into account the testimony of the Claimant and documents produced by the Respondent, it would therefore be unnecessary to consider whether the Respondent discharged the statutory burden expected of it (substantive fairness) with the conclusion that the Claimant has failed to demonstrate that an unfair termination of employment occurred.

## **Remedies**

### ***Pay in lieu of notice***

16. With the conclusion reached, this head of relief is not available.

### ***Compensation***

18. This relief is equally not available.

### ***Service pay and leave pay***

19. The Claimant did not lay any legal, contractual or evidentiary foundation for these heads of relief and they are declined.

## **Conclusion and Orders**

20. The upshot of the above is that the Court finds no merit in the cause of action and orders that it be dismissed with costs to the Respondent.

**Delivered, dated and signed in Nakuru on this 2<sup>nd</sup> day of November 2016.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Mr. Mogambi instructed by Wambua Kigamwa & Co. Advocates

For Respondent Mr. Akello instructed by A.K. Chepkonga & Co. Advocates

Court Assistant Nixon/Daisy