



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

**AT NAIROBI**

**CAUSE NO. 1430 OF 2013**

**(Before Hon. Justice Hellen S. Wasilwa on 13<sup>th</sup> December, 2016)**

VINCENT OKUKU WANDERA .....CLAIMANT

VERSUS

JOSEPH GAKANI NDUNGU .....RESPONDENT

**JUDGMENT**

1. The Claimant filed suit on 5<sup>th</sup> September, 2013, through the firm of Khalwale and Company seeking damages for wrongful dismissal.
2. He states that on or about 15<sup>th</sup> September, 2009, he was employed by the Respondent as a pump attendant at the Respondent's petrol station earning a basic pay of Shs. 7,000/= . He further states that he served the Respondent diligently and honestly till his services were terminated on 28<sup>th</sup> May, 2012, without notice, payment of salary for the month of May and terminal benefits.
3. It is the Claimant's contention that he worked for the Respondent for a total of fourteen months before termination, had not proceeded on leave the entire period he was employed and neither was he paid house allowance. He states that he was dismissed without being heard and the principles of natural justice and the Employment Act were not followed. He prays for judgment against the Respondent in terms set out in the memorandum of Claim.
4. The Respondent entered appearance through the firm of Barongo Ombasa & Company but failed to file a Response to the Claim and as such the matter proceeded as an undefended cause.
5. During the trial the Claimant led evidence as per the Memorandum of Claim and sought for his Claim to be allowed as drawn.
6. From the list of documents filed by the Claimant is an employment card showing that the Claimant was a pump attendant at Kobil Ngong Road where the Respondent was carrying out his business.
7. The Claimant has averred that he served Respondent from 15<sup>th</sup> September 2009 to 28/5/2012 when he was verbally terminated. His salary was 7,999/= monthly.
8. Having heard the Claimant, I note that his evidence that he was an employee of the Respondent is not controverted. The Respondent was served and since he didn't attend Court nor file a response, I find the

Claimant has established his case on a balance of probabilities and I award him as follows:

- 1. 1 months salary in lieu of notice = 7,000/=.**
- 2. Salary for May 2012 = 7,000/=.**
- 3. House allowance equivalent to 15% x 7,000 x 20 months = 21,000/=.**
- 4. Service pay equivalent to 15 days salary for each year worked =  $\frac{1}{2} \times 7,000 \times 2 = 14,000/=$ .**
- 5. 12 months salary as compensation for wrongful termination = 12 x 7,000= 84,000/=.**

**TOTAL = 133,000/=**

**6. The Respondent will pay costs of this suit.**

**7. Issuance of Certificate of Service.**

Read in open Court this 13<sup>th</sup> day of December, 2016.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Khalwale for Claimant – Present

No appearance for Respondent