



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO 2132 OF 2012**

**PETER KANGETHE KAMAU.....CLAIMANT**

**VS**

**TELKOM-KENYA.....RESPONDENT**

**AWARD**

**Introduction**

1. This action was initially lodged at the Chief Magistrate's Court by way of a plaint dated 11<sup>th</sup> October 2007. The Respondent filed a Statement of Defence on 10<sup>th</sup> December 2007 and the matter was transferred to this Court in October 2012. The Claimant then filed a Memorandum of Claim on 23<sup>rd</sup> August 2013 and the Respondent filed a Reply on 16<sup>th</sup> June 2014. When Counsels for the parties appeared before me on 26<sup>th</sup> November 2014, they agreed to proceed by way of written submissions.

**The Claimant's Case**

2. By a letter dated 1<sup>st</sup> March 1987, the Claimant was absorbed in the position of Driver II in the semi-skilled establishment of the Kenya Posts and Telecommunications Corporation. On 19<sup>th</sup> February 2007, the Respondent dismissed the Claimant from employment.

3. The Claimant contends that his dismissal was without any justifiable cause and that he was not given an opportunity to be heard. He claims the following:

- a) 2 months' salary in lieu of notice.....Kshs. 20,074.00
- b) Severance pay.....Kshs. 1,112,119.50
- c) Leave.....Kshs 73,431.00
- d) Costs and interest

**The Respondent's Case**

4. In its Reply, the Respondent admits that the Claimant was employed by the Kenya Posts and Telecommunications Corporation from 1<sup>st</sup> March 1987 in the position of Driver II. The Claimant was promoted to the position of Driver III on 1<sup>st</sup> September 1994. Following the dissolution of the

Kenya Posts and Telecommunications Corporation, the Claimant was absorbed by the Respondent in 1998.

5. On 12<sup>th</sup> February 2007, the Claimant was implicated in the unauthorised use of motor vehicle registration number KAC 952G which was involved in an attempted theft of the Respondent's cables. The Respondent states that the Claimant's conduct was in breach of the Human Resource policy regulating the Claimant's employment which attracted the penalty of summary dismissal.

6. The Claimant was invited to show cause why he should not be dismissed and having failed to do so, he was terminated and paid one month's salary in lieu of notice. It is the Respondent's case that the termination of the Claimant's employment was lawful and in accordance with the obtaining contractual and regulatory terms.

### **Findings and Determination**

7. The following issues call for determination before the Court:

- a) Whether the Employment Act, 2007 and the reliefs there under are applicable in this case;
- b) Whether the Claimant is entitled to 2 months' salary in lieu of notice;
- c) Whether the Claimant is entitled to severance pay and leave pay as claimed.

### **Applicable Employment Law**

8. From the Memorandum of Claim, it would appear that the Claimant's claim is based on the Employment Act, 2007. However, the accrual date of the cause action being 19<sup>th</sup> February 2007 falls outside the commencement date of the Act, being 2<sup>nd</sup> June 2008.

9. There is now firm jurisprudence from this Court that actions arising before 2<sup>nd</sup> June 2008 are governed by the repealed Employment Act (Cap 226) and not the Employment Act, 2007 (see *Jeremiah Ojwang Ojak Vs Central Bank of Kenya [2012] eKLR* and *Agnes Murugi Mwangi Vs Barclays Bank of Kenya Limited [2013] eKLR*).

10. I see no reason to depart from this position and therefore hold that the Claimant's claim which arises from a cause of action arising after the commencement date of the Employment Act, 2007 falls outside the ambit of that Act. Consequently, the Court will examine the Claimant's claim against the terms and conditions set out in his employment contract as well as the provisions of the repealed Employment Act (Cap 226).

### **Damages for Unfair Termination**

11. In the written submissions filed on behalf of the Claimant, a claim for damages for unfair termination of employment is made. This claim was however not pleaded nor was it substantiated. The Court therefore finds no basis for it and proceeds to dismiss it.

### **Notice Pay**

12. According to the Respondent which is not denied by the Claimant, the Claimant was paid one month's salary in lieu of notice at the point of his termination. The Claimant however claims a further 2 months' salary in notice pay. It would appear that in making this claim, the Claimant relied on Clause (c) of letter dated 23<sup>rd</sup> January 1995 by which he was upgraded from semi-skilled to pensionable service. The said clause required the Claimant to give 3 months' termination notice or pay one month's salary in lieu. The Court finds no provision in this clause or in law to support the Claimant's claim for 2 months' salary in lieu of notice. This claim therefore fails and is

dismissed.

### **Severance Pay and Leave Pay**

13. The Claimant claims severance pay in the sum of Kshs. 1,112,119.50 and leave pay in the sum of Kshs. 73,431. Under the repealed Employment Act (Cap 226) as well as under the Employment Act, 2007 severance pay is payable to employees declared redundant and since there was no evidence that the Claimant was declared redundant, this claim has no leg to stand on.

14. With regard to the claim for leave pay, no particulars as to the number of days or the applicable rate were provided to the Court. As held by **Lord Goddard C.J** in ***Bonham Carter Vs. Hyde Park Hotel (1948) 64 T.L.R 177***, parties who come to Court seeking relief must provide details of that which they claim. Figures that are thrown at the Court serve no purpose in the litigation process. The Claimant's claim for leave pay therefore fails and is dismissed.

15. The upshot is that the Claimant's entire claim fails and is hereby dismissed. Each party will bear their own costs.

Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT NAIROBI THIS 26<sup>TH</sup> DAY OF JANUARY 2015**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Muli for the Claimant

Mr. Nyaburi for the Respondent