



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS**  
**COURT OF KENYA AT NAIROBI**

**CAUSE NO. 1264 OF 2013**

**STANLEY GITAU NJOGU ..... CLAIMANT**

**VERSUS**

**KENYACAM ..... RESPONDENT**

**Mr. Gomba for the Claimant**

**M/s Mutung'a for the Respondent**

**JUDGMENT**

1. In the Statement of Claim dated 12<sup>th</sup> August, 2013, the Claimant seeks reinstatement to his job and in the alternative maximum compensation for unlawful and unfair dismissal.
2. In the Alternative, the Claimant seeks payment of terminal benefits set out in the Statement of Claim.
3. The Respondent filed a Statement of Defence on 29<sup>th</sup> August, 2013.
4. The Claimant testified in support of his Particulars of Claim as follows;-
5. That he was employed by the Respondent in August, 2014 as a driver earning a monthly salary of Ksh.30,000.00 as seen in a payslip produced in court. That in addition he was assigned other duties including building communication towers and masonry. He worked seven (7) days a week including public holidays and never went on annual leave.
6. He told the court that anyone who complained was sacked.
7. That on 3<sup>rd</sup> January, 2013, he reported to work as usual and out of the blues, he was summoned by the Human Resource Manager and was given a letter of dismissal marked SG.4.
8. He was accused in the letter of misconduct in that he did not listen to his supervisor on 17<sup>th</sup> December, 2012. This was said to have come after a previous warning letter issued on 19<sup>th</sup> November, 2012 for late arrival at work. He was served with a recommendation letter dated 3<sup>rd</sup> January, 2013.
9. The Claimant told the court that he suffered loss and damage and was greatly affected psychologically. He was not paid in lieu of Notice, was not paid in lieu of 21 days leave, and seeks compensation for the unlawful and unfair dismissal. He denies the allegations contained in the letter of

dismissal. He wrote a letter of demand in vain.

10. He had worked for 1½ years and prior to the sacking, he had complained to the Human Resource Manager of the bad working conditions concerning being made to do other works when he was employed as a driver. He was forced to attend training and build towers. He said that he no longer wanted to be reinstated as he was now living at Nyahururu. He seeks compensation and terminal benefits.

11. He confirmed that on 19<sup>th</sup> December, 2012, he was given a warning letter for late arrival. That he had not arrived late as alleged since he had been sent to buy water from a supermarket. He said he was a very honest and reliable employee.

12. That he was sacked with two others. There was no opportunity to explain himself, the Human Resource Manager simply said that he had instructions from the Director to write the letter of dismissal.

13. RW1, was Mr. Francis Macharia, the Human Resource Manager. He told the court that the Claimant was employed on 16<sup>th</sup> August, 2010 as a casual earning Ksh.1,000.00 per day. On 1<sup>st</sup> February, 2012 the Claimant got a written contract but did not sign it. He was on three months' probation.

14. He told the court that the Claimant was trained to do other works though he was employed as a driver.

15. The witness did not refute the evidence by the Claimant that on 19<sup>th</sup> December, 2012 when he was given a warning letter he had been sent to bring water from the supermarket and was not late to work.

16. The witness told the court that in December, 2012, the Director found the Claimant and a colleague seated talking during official hours. The Director then directed RW1 to write a letter of dismissal which he gave to the Claimant immediately.

17. He admitted that the Claimant worked as a rigger and a mason.

18. RW1 was unable to tell the court if the Claimant was given a hearing at all before the dismissal.

19. **Determination**

There is clear evidence that the Claimant was employed as a driver but was made to do other manual work without his consent.

20. The Claimant was summarily dismissed with his colleague for having been found having a rest at the work station by the Director according to RW1.

21. To the contrary, the letter of summary dismissal states that the Claimant was dismissed for insubordination.

22. No evidence was led at all to substantiate this discrepancy in the letter of summary dismissal.

23. The Claimant was not given notice or payment in lieu. He was not given a notice to show cause, nor was he given an opportunity to explain why he should not be summarily dismissed.

24. The Respondent appears to have been highhanded in the manner she treated the Claimant and other employees.

25. No valid reason has been given for the summary dismissal of the Claimant. It is obvious that no due process was followed in effecting the summary dismissal.

26. The summary dismissal was unlawful and unfair taking all the circumstances of the case into

consideration.

27. The Claimant had just been wrongfully warned for late coming when in fact he was on official errand. This was unfair conduct by the Respondent which should be discouraged.

28. The Claimant explained how the sudden dismissal humiliated him and caused him loss and damage. He did not wish to be reinstated as he was presently farming. He sought maximum compensation for the unlawful and unfair dismissal.

29. Taking into account the considerations for granting remedies set out under Section 49(4) of the Employment Act, 2007 vis-a-vis the facts of the case, we find this an appropriate case to award;

- a. eight (8) months' salary as compensation for the summary dismissal in the sum of Ksh.240,000.00
- b. the court also awards the Claimant one month salary in lieu of Notice in the sum of Ksh.30,000.00
- c. the Claimant has also satisfied the court that he was not granted annual leave for the period worked and is awarded Ksh.24,286.00 in lieu of 21 days untaken leave

Total award to the Claimant is Ksh.294,286.00

30. The award is payable with interest at court rates from date of Judgment till payment in full.

31. The Respondent is also to pay the costs of the suit.

**Dated and Delivered at Nairobi this 13<sup>th</sup> day of March, 2015.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**