



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

**AT NAIROBI**

**CAUSE NO. 1509 OF 2011**

**(Before Hon. Justice Hellen S. Wasilwa on 12<sup>th</sup> March, 2015)**

**MICHAEL MASIKA OMONYO.....CLAIMANT**

**VERSUS**

**TILE AND CARPET CENTRE.....RESPONDENT**

**JUDGMENT**

1. The Claimant herein filed his Memorandum of Claim on 6/9/2011 through the firm of Namada & Co. Advocates. The Claimant's contention is that he was unfairly terminated and not paid his terminal dues.

The Respondent is a Limited Liability Company dully incorporated in Kenya under the Company's Act Cap 486 Laws of Kenya with the capacity to sue and be sued.

**Claimant's case**

2. The Claimant avers that he was employed by the Respondent from 1<sup>st</sup> August 2009 until 22<sup>nd</sup> February 2010 and worked there at continuously to the satisfaction of the Respondent earning a salary of Kshs.6400/=.

The Claimant aver that on 22<sup>nd</sup> February 2011, without any notice and/or a chance to defend himself, the Respondent suspended him from duty on allegations that he reported to his workplace late by 30 minutes and thereafter terminated his services.

3. It is the Claimant's position that the Respondents position amounted to an unlawful, unfair and inhuman terminated of his employment. The same is aggravated by the fact that the Respondent declined to pay the Claimant his terminal dues which he now claims as per his statement of claim amounting to Kshs.89,600/= being compensation for 12 months. The Claimant also prays that he be issued with a Certificate of Service and also seeks costs and interest.

**Respondent's case**

4. The Respondent filed their Statement of Defence on 19/1/2012 through the Federation of Kenya Employers. Their position was that the Claimant was employed by them on 17/8/2009 as a general laborer earning a salary of Kshs.6433 per month and house allowance of Kshs.1600/= per month as per the employment letter **Appendix 1**- (Respondents documents).

It is further the Respondents case that the Claimant was engaged in repeated misconduct and was given warning letters. He was then terminated on 27/4/2011 as per their Appendix 2. He was then paid accrued leave pay and notice pay in his pay for April 2011.

5. The Respondent submitted that the dismissal of Claimant was lawful as the Claimant was rude and he failed to follow instructions.

### **Issues for determination**

6. Having considered the evidence of both parties, the issues for determination are as follows:

- (i). **Whether Respondent had a valid reason to terminate the Claimant.**
- (ii). **Whether due process was followed before Claimant was terminated.**
- (iii). **Whether Claimant is entitled to prayers sought.**

7. On the 1<sup>st</sup> issue, the purported termination letter of the Claimant is Respondents Appendix 2 which stated as follows:

*“Dear Mr. Omony,*

#### **RE: TERMINATION**

*We regret to inform you that we have decided to end your employment with Tile and Carpet Centre Limited with effect from 27<sup>th</sup> April 2011.*

*Please receive your final dues as per your April 2011 pay slip which include pay in lieu of leave accrued and notice pay.*

*Please arrange to return any company property that is in your possession.*

*We wish you well in your future endeavors.*

*Yours faithfully*

*Signed*

*Mandeep Degor*

*Human Resource Manager*

*For Tile & Carpet Centre Limited”*

8. A look at the above letter reveals that no reasons for the termination were given. This is in contravention of Section 43 of the Employment Act which states as follows:

***1. In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.***

***2. The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.***

The Claimant was entitled to be informed of these reasons and be accorded a hearing as envisaged under

Section 41 of Employment Act 2007 which states:

**1. Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.**

**2. Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.**

The Claimant was never given any hearing and because of failure to do this, this termination was unfair. Also, the Respondent failed to follow fair procedure before terminating this employment. This also makes this termination under Section 45(1) (c) of Employment Act unfair.

9. It is therefore the finding of this court that the Claimant was unfairly terminated. He is therefore entitled to the following remedies:

**(1). 12 months salary as compensation for unlawful termination = 12 x 8612 = 103,344/= less statutory deductions.**

**(2). He is entitled to leave outstanding and 1 months salary in lieu of notice which has already been paid.**

**(3). He should be issued with a Certificate of Service.**

**(4). Respondent should pay costs of this suit.**

Dated in open court this 12<sup>th</sup> day of March, 2015.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Okuta holding brief for Molenge for Respondent

Cliff Oduk holding brief for Mulanya for Claimant