



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

**AT NAIROBI**

**CAUSE NUMBER 1658 OF 2012**

**GEOFFREY MURINGI MWANGI.....CLAIMANT**

**VERSUS**

**RWAKEN INVESTMENTS LIMITED.....RESPONDENT**

**JUDGMENT**

1. The claimant in this suit claims that he was employed by the respondent as a driver from April, 2007 to May 2012 at a salary of Kshs.20,000/= per month.
2. On 2<sup>nd</sup> June, 2012 his services were terminated on account of the fact that he was accused of carrying unauthorized passengers in the vehicle he was assigned to drive. According to his evidence in Court, Mr. Bosco who was his boss asked him to go away and was never thereafter assigned any vehicle to drive.
3. It was his evidence that he was never given any warning or a dismissal letter upon termination of his services. Further, he was never paid his terminal dues.
4. The respondent on the other hand avers that he never terminated the services of the claimant. According to Mr. Bosco who gave evidence on behalf of the respondent, the claimant took his May salary and never reported to work thereafter. It was his testimony that it was normal for drivers to leave work without notice when they found better jobs. He further stated that if the claimant were to return he would get back his job.
5. The Court is herein confronted with a verbal contractual relationship whose terms cannot be properly ascertained in order for the Court to determine if the separation from the relationship took place in accordance with such contract.
6. Section 9 of the Employment Act requires that a contract of service for three months or more shall be in writing. Further section 10(7) of the Act provides that in any legal proceedings if an employer fails to produce a written contract or written particulars of contract of employment, the burden of proving or disproving an alleged term of employment shall be on the employer.
7. The respondent in this suit neither produced a written contract of service between itself and the claimant. It further did not sufficiently disprove the allegations by the claimant concerning his terms of service including leave and mode of termination of employment.
8. This Court has stated severally before that an employment relationship is terminable at any

time and for any justifiable reason. However in doing so, an employer is obliged by law to follow a fair procedure as stipulated both by the Employment Act and rules of natural justice generally. That is to say an employer may have justifiable reason for terminating an employee's contract but still be liable to compensate such employee for unfair dismissal where it is established that the dismissal was not done in accordance with fair procedure.

9. The respondent claimed that the claimant absconded duty after receiving his May, 2012 salary and did not bother to look for him since it was normal for drivers to abscond duty upon obtaining better paying jobs elsewhere.

10. In terminating services of an employee on grounds of absconding duty, the employer must be reasonably satisfied that the employee left his place of employment in circumstances that leaves no reasonable doubt that such employee does not intend to continue with the contract of employment. Normally this ought to be evidenced by a notice to show cause why employment should not be terminated on grounds of absconding duty. In this age and time, this need not be in the traditional paper letter. The message can be transmitted using modern communication channels including text message through mobile telephone. No such thing happened in this case.

11. Whereas, the respondent may have had valid reason to terminate the claimant services, it did not do so using fair procedure with the consequence that the Court finds the termination unfair and awards the claimant as follows.

**Kshs.**

- (a) One month's salary in lieu of notice.....20,000.00
- (b) 2 months' salary for unfair termination  
of services.....40,000.00
- (c) 3 years leave pay @ one month's salary  
Per year.....60,000.00  
120,000.00

12. The claimant shall have costs of the suit.

13. The respondent shall further issue the claimant with a certificate of service.

Dated at Nairobi this 6<sup>th</sup> day of March 2015

Abuodha J. N.

Judge

Delivered this 11<sup>th</sup> day of March 2015

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge