



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

**AT NAIROBI**

**CAUSE NUMBER 1420 OF 2014**

**PAUL KIARIE MUIRURI.....CLAIMANT**

**VERSUS**

**WIDRUPS GROUP LIMITED.....RESPONDENT**

**JUDGMENT**

1. This cause proceeded as an undefended cause when the Court was persuaded that the respondent was duly served but failed to enter appearance or file a defence to the claim.
2. The claimant informed the Court that he was employed by the respondent on 3<sup>rd</sup> February, 2014 as a Civil and Structural Engineer. He was issued with an appointment letter and his appointment confirmed on 3<sup>rd</sup> May, 2015.
3. On 3<sup>rd</sup> June, 2015 he received a letter informing him of reduction of his salary on the grounds that he was under- performing. It was his evidence that he was never consulted on the issue of his underperformance. He attempted to meet the respondent's director over the issue without success as the director refused to see him. He consequently wrote a letter of complaint on 4<sup>th</sup> June, 2014 which was never responded to. On 9<sup>th</sup> June 2014 he received a termination letter instead.
4. It was his evidence that he was never given any hearing or an opportunity to defend himself prior to the termination. He further stated that he was not paid for days worked in May and June.
5. The respondent after terminating his services gave him a tabulation of his final dues. One was based on gross salary of Kshs.50,000/= and another on Kshs.142,000/=. He was however not paid after the tabulation.
6. The Employment Act at section 41 requires that prior to termination of service on account of poor performance the employer must explain to the employee the reason for which the employer is considering such termination.
7. In a claim arising out of unfair termination of employment, the onus of proof and justification for reasons for dismissal lie on the employer.
8. The respondent though served never appeared nor filed a defence to the claim. The claimant on the other hand has reasonably and on a balance of probability proved his claim against the

respondent and the Court awards him as follows:-

- (a) Salary for May, 2014.....142,000.00
- (b) Salary for 9 days in June.....45,642.00
- (c) Salary in lieu of notice.....142,000.00
- (d) Eight months' salary as compensation  
For unfair dismissal.....1,136,000.00
- 1,465,462.00
- (e) Costs of the suit
- (f) The respondent shall issue the claimant with certificate  
of service.

9. It is so ordered.

Dated at Nairobi this 22<sup>nd</sup> day of May 2015

Abuodha J. N.

Judge

Delivered this 22<sup>nd</sup> day of May 2015

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge