



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1333 OF 2011**

**(Before Hon. Justice Hellen S. Wasilwa on 21<sup>st</sup> July, 2015)**

**KYALO MUSYOKI.....CLAIMANT**

**VERSUS**

**TECKPAK INDUSTRIES LIMITED.....RESPONDENT**

**JUDGMENT OF THE COURT**

1. The Claimant herein Kyalo Musyoki filed his Memorandum of Claim on 4/8/2011 through the firm of Namada & Company Advocates alleging wrongful and unlawful termination of his employment and non-payment of his terminal dues.

The Claimant avers that he was employed by the Respondent from 1/11/2010 on a 2 year contract as per his Appendix 1. His salary was 12,500/= per month plus a house allowance of 2,600/= per month.

2. On the 1/12/2010 the Claimant avers that he received a show cause letter from the Respondents and he was to show cause why there was an adjustment on the Respondents computer system of about 150,000 pieces of silver foil from the stock of 20<sup>th</sup> November 2010 which adjustment did not tally with the physical stock. The Claimant wrote a response the same day explaining himself.

3. On 6/12/2010, the Claimant's services were terminated and he avers that he was not given any reason as to why and he contends that he was unlawfully terminated and seeks damages for the breach and 1 month salary in lieu of notice.

4. The Respondents filed their Memorandum of Defence on 19/9/2011 through the Federation of Kenya Employers (KFE). It is the Respondents case that they were entitled to dismiss the Claimant for willful neglect of his duties under Section 44(4) of Employment Act 2007. They also aver that since the Claimant was still on probation, he could not be entitled to a hearing under Section 41 of Employment Act 2007.

5. Having considered the evidence of both parties plus the submissions filed, this court takes cognizance of the fact that the Claimant had just been employed by the Respondent on 1/11/2010 and had served just about 1 month when a problem occurred in his work. While being on probation, the contract could be terminated by giving 7 days notice.

Under Section 42(1) of Employment Act 2007:

***“The provisions of Section 41 shall not apply where a termination of employment terminates a probationary contract”.***

6. Since in this case the Claimant was still on probation, the provisions of Section 41 of Employment Act on disciplinary hearing did not apply to him.

Under section 45(3) of Employment Act:

***“An employee who has been continuously employed by his employer for a period not less than thirteen months immediately before the date of termination shall have the right to complain that he has been unfairly terminated”.***

7. The Claimant having been in employment for only 1 month could not complain of unfair termination.

That being the position, the only remedy the Claimant is entitled to is 7 days salary as notice pay =  $7/30 \times 15,100 = 3,523/=$

He shall also be issued with a Certificate of Service.

Each party to bear their costs.

Read in open Court this 21<sup>st</sup> day of July, 2015.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

No appearance for Respondent

No appearance for Claimant