



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**  
**AT NAIROBI**  
**CAUSE NO. 686 OF 2013**

**ANTONY KIOKO..... CLAIMANT**

**VERSUS**

**SAVANNAH CEMENT (EPZ) LIMITED..... RESPONDENT**

Mr Bwire for the Claimant

Ms Komu for the Respondent

**JUDGEMENT**

1. The Claimant seeks maximum compensation of 12 months' salary for the alleged unlawful and unfair termination of employment.
2. The Claimant was employed by the Respondent on 3<sup>rd</sup> July, 2012 in the position of Administration Coordinator at a monthly salary of Kshs 180,000. The letter of employment was produced as exhibit I.
3. The termination in terms of the letter of employment was by either party giving a three months notice or pay salary in lieu.
4. On 26<sup>th</sup> March 2013, the Claimant was given a notice to show cause why his employment should not be terminated for reasons:
  - a. That there was a relationship between the Claimant and business entities known as Vile and Blind General Suppliers and Jagensons Ventures.
  - b. That there was a conflict of interest in the client working at the Respondent who was in business with the said businesses.
  - c. That a Mr Kioko Mwangangi who was an employee of Vile & Blind General Suppliers was a relative of the claimant.

5. Show cause letter was produced as exhibit 3.
6. The Claimant denies having any relationship with the two entities as shown in the document of Incorporation and certificate produced as exhibit 4 & 5.
7. The Claimant further denies any relationship with Mr Kioko Mwangangi and favouring any of the Applicants in the pre-qualification tender. That the Claimant was only invited to an end of year party by Vile & Blind General Supplier at Maanzoni Lodge and other clients were at the function including CDF Kisera; International organization for Immigration and VCT Liverpool. The Claimant produced an invitation card for the event marked exhibit 6.
8. The Claimant testified under oath in support of his case stating he was a good employee with no underhand dealings. That the Respondent had no valid reason to terminate his employment as it did on 8<sup>th</sup> April, 2013.

## **Response**

9. The Respondent stated that it was not satisfied with the explanation given by the claimant to the charges in the statement of Response filed on 13<sup>th</sup> August 2013.
10. The claimant was accused of not carrying out responsibilities in a manner consistent with the policies and values of Savannah Cement during his tenure and this was clear dereliction of duty. This according to the Respondent constituted valid reasons for dismissal.
11. The Respondent however did not call any witness in support of its case nor did it adduce any evidence in support of the allegations of conflict of interest made against the Claimant.
12. The Respondent alludes to an Internal Audit conducted but did not table any Audit report to authenticate the allegations levelled against the Claimant.
13. One Joseph Wachira filed a witness statement dated 8<sup>th</sup> August, 2013 in which there is no concrete evidence of wrong doing by the Claimant. The witness did not appear in court to testify in the matter.

## **Determination**

14. The Claimant has established on a balance of probabilities that his employment was terminated by the Respondent for no valid reason.
15. The Claimant was not called to a disciplinary hearing and had extensively responded to the notice to show cause denying any inappropriate relationship or dealings with the two companies named herein and with one Mr Michael Kioko.
16. The termination was based on mere speculation on the part of the Respondent.
17. It has not been shown that the Respondent lost any money or suffered any prejudice emanating from the conduct by the Claimant.
18. Accordingly, the court finds that the termination of the employment of the Claimant was contrary to section 45(1) as read with section 45(2) (a) and (c) of the Employment Act, 2007 in that it was not for a valid reason and was not effected in terms of a fair procedure.
19. The Claimant has suffered loss and damage as a result of the unlawful and unfair termination and is entitled to compensation in terms of section 49(1) as read with section 49(4) of the Employment Act, 2007.

20.The Claimant was falsely accused of impropriety and lost his means of livelihood. Up until the time of coming to Court, he had not found alternative employment. He was 46 years old with good career prospects in administration and procurement. He was a graduate of the University of Egerton. His career prospects were dashed in the prime of his career.

21.The Claimant's good name was tarnished based on mere speculation.

22.Accordingly, the Court awards the Claimant eight month's salary as compensation for unlawful and unfair dismissal in the sum of Kshs 1,440,000.

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

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

**Dated and Delivered at Nairobi this 10<sup>th</sup> day of July 2015.**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**