



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**CAUSE NO. 146 OF 2014**

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED WORKERS.....  
CLAIMANT**

**VERSUS**

**KITANGA WATER PROJECT..... RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 10<sup>th</sup> July, 2015)

**JUDGMENT**

The claimant trade union filed the memorandum of claim on 20.04.2014 claiming the unlawful dismissal of its member James Muyah Ndangili, the grievant. The claimant prayed for judgment against the respondent for:

- a. One month pay in lieu of the termination notice Kshs. 7, 000.00.
- b. Annual leave not taken Kshs. 7, 000.00.
- c. Severance pay for 3 years service Kshs. 12, 115.40.
- d. 12 months' salaries for unfair termination Kshs. 84,000.00.
- e. Total claim Kshs. 96, 129.00.

Despite service of the memorandum of claim and notice of summons, the respondent failed to file the memorandum of response and did not attend the hearing or directions on judgment despite service of the hearing notice and the mention notice on directions.

The claimant's case is that the true reason for the termination was the grievant's valid complaint that the respondent had failed to remit the statutory dues namely NSSF and NHIF dues. That the subsequent termination was therefore without a valid reason as envisaged under section 43 of the Employment Act, 2007 and the reason being a genuine grievance was an unfair reason in terms of section 46(h) of the Act. The grievant further lamented that he was not given a hearing as envisaged in section 41 of the Act because he was suspended by the letter dated 21.03.2013 and then he received the termination letter dated 24.05.2013 without any hearing. The matter was subject to statutory conciliation proceedings under the department of labour, the respondent failed to participate and the conciliator issued the referral certificate paving way for filing of the suit.

In absence of the memorandum of response and evidence on the part of the respondent, the court finds that the claimant has established its case and the prayers are allowed as made in the memorandum of claim. The respondent will pay costs of the suit fixed at Kshs.25, 000.00.

In conclusion judgment is entered for the claimant against the respondent for the respondent to pay a sum of **Kshs.121, 129.40** by 1.09.2015 in default, interest at court rates to be payable thereon from the date of this judgment till full payment.

**Signed, dated and delivered** in court at Nyeri this **Friday, 10<sup>th</sup> July, 2015.**

**BYRAM ONGAYA**

**JUDGE**