



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

**CAUSE NO. 1922 OF 2013**

**MICHAEL SAVALI MUSYOKA.....CLAIMANT**

**VERSUS**

**MANJI FOOD INDUSTRIES LIMITED.....RESPONDENT**

**JUDGMENT**

**Betty Rashid for Claimant**

1. By consent of the parties this suit filed vide statement of claim dated 3<sup>rd</sup> December 2013 and defended by a memorandum of response dated 7<sup>th</sup> January 2014 proceeded by way of the documentation filed and written submission by the parties.

2. The Claimant seeks;

- a. three month's salary in lieu of notice in the sum of Kshs 37,200;
- b. service pay of six months in the sum of Kshs 74,400;
- c. general damages for unlawful termination equivalent to six months' pay in the sum of Kshs 74,400;
- d. general damages for injuries sustained in the course of work;
- e. under payment for twelve (12) months;
- f. overtime for twelve (12) months.

**Facts of the Claim**

3. That the Claimant was employed as a general worker earning a daily wage of Kshs 400 on or about November 2012. The claimant served until 5<sup>th</sup> August 2013.

4. That during the course of duty, the Claimant sustained a serious cut on his left hand index figure when he was arranging biscuits in the boxes and a string on which the boxes were moving on cut him.

5. That this was caused by the negligence of the Respondent and/or breach of employment terms and conditions thereof on the part of the Respondent, its Agents and/or servants.

6. The Claimant was dismissed from work due to the injuries he had sustained without payment of his

terminal benefits. The Claimant has served the Respondent for about nine (9) months.

### **Response**

7. In the statement of Response, the Respondent avers that the claimant is unknown to the Respondent and has never worked for the Respondent. That he could not have been injured at the Respondents work place thereof.

8. That the suit be dismissed with costs and the court investigates the conduct of the Claimant as his allegations are serious falsehoods aimed at injuring the reputation of the Respondent.

### **Determination**

9. The Counsel for the Claimant filed very brief submissions on behalf of the Claimant on 16<sup>th</sup> June 2015. The Respondent did not file any submissions.

10. The onus of proving the particulars of claim is on the Claimant on a balance of probability. No iota of evidence was adduced by the Claimant on the averments made in the statement of claim.

11. The attachments to the statement of claim do not aid at all in this regard.

12. The Court finds that the Claimant has dismally failed to discharge its onus of proof. The Court is in the circumstances unable to find that, the Claimant was employed by the Respondent and was injured in the course of employment and subsequently unlawfully terminated from the said employment.

13. The suit is accordingly dismissed with costs to the Respondent.

**Dated and Delivered at Nairobi this 23<sup>rd</sup> day of October, 2015**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**