



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

**AT NAKURU**

**CAUSE NO. 279 OF 2014**

**LAWRENCE ECHUU.....CLAIMANT**

**v**

**GREEN PARK WATER SERVICES LTD.....RESPONDENT**

**JUDGMENT**

1. Lawrence Echuu (Claimant) was summarily dismissed by Green Park Water Services Ltd (Respondent) through a letter dated 20 June 2013.
2. The Claimant was aggrieved and a complaint of unfair/unlawful termination of employment was made to the County Labour Officer, Naivasha. Conciliation meetings were subsequently held under a conciliator A.M. Karimi.
3. Officials of the Kenya Union of Commercial, Food and Allied Workers represented the Claimant during the conciliation process.
4. On 14 November 2013, a Certificate of Agreement was signed by the Claimant, A Mwangi and Jeremiah Waweru (union representatives) on the one side and 2 of the Respondent's managers. The agreement was witnessed by the Conciliator.
5. A copy of the agreement produced in Court show that the parties agreed that the summary dismissal of the Claimant be reduced to normal termination and the Claimant be paid notice pay and wages for June 2013.
6. On 19 November 2013, the Respondent deposited Kshs 20,675/- with the County Labour Office and an acknowledgment was produced in Court. A Payment Agreement/Settlement produced indicate the Claimant collected Kshs 7,447/- on 18 December 2013.
7. In spite of the agreement and settlement reached at conciliation, the Claimant commenced legal proceedings against the Respondent on 3 July 2014 and he stated the issue in dispute as *unfair termination* of employment.
8. The Claimant sought a declaration that the termination of his services was unfair and payment of house allowance, overtime, notice pay and compensation for loss of employment.
9. The Respondent filed a Response on 6 October 2014 and the Cause was heard on 26 February 2015 and 2 June 2015. The Claimant did not file submissions within the agreed timelines while the Respondent

filed its written submissions on 1 July 2015.

10. The Court has considered the pleadings, evidence and submissions. Because of the view the Court has taken of the matter, it is not necessary to discuss whether the dismissal of the Claimant was unfair.

11. The Court will only discuss the issue of whether the complaint of unfair termination of employment was compromised and contractual entitlements..

12. It is not disputed that the parties herein made a complaint to the local Labour office and a conciliator was appointed. The parties made representations before the conciliator and an agreement was reached to reduce the summary dismissal to *normal termination* of employment.

13. As a consequence of the agreement the Claimant was paid (it is not clear whether he was paid Kshs 20,675/- in total or not. He should seek any balances from the Labour Office, if at all).

14. But the fact remains that the complaint was mutually resolved by the parties.

15. In my view, although the primary labour statutes have not expressly barred employees from commencing legal proceedings where a dispute has been settled during conciliation, it is against public policy for a party to such settled or compromised employment dispute to commence legal proceedings on the same facts.

16. The Court also notes that the Claimant did not lay a contractual or statutory basis for the claim for house allowance, severance pay (applies in cases of redundancy) or for overtime or give a rough quantum thereof.

17. The Claimant's pay slips show he was getting house allowance, and if by severance pay the Claimant meant service pay pursuant to section 35(5) of the Employment Act, 2007, he is not entitled to the same because he was a contributing member to the National Social Security Fund.

18. Considering the foregoing, the Memorandum of Claim filed in Court on 3 July 2014 is dismissed with an order that each party bears its own costs.

**Delivered, dated and signed in Nakuru on this 6<sup>th</sup> day of November 2015.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Mr. Muthanwa instructed by Muthanwa & Co. Advocates

For Respondent Ms. Wachira instructed by G. V. Mumia & Co. Advocates

Court Assistant Nixon