



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT KISUMU**

**CAUSE NO. 82/2013**

*(formerly Nai 16/12)*

(Before Hon. Justice Hellen Wasilwa on 27<sup>th</sup> February, 2014)

RICHARD MANYA AYIEKO ..... CLAIMANT

**-VERSUS-**

CHEMILIL SUGAR CO. LTD ..... RESPONDENT

**JUDGMENT**

The claimant herein Richard Manya Ayieko filed his claim on 9.1.2012 through the firm of Bruce Odeny & Co. Advocate. His claim is that he was employed by the claimants in October 1986 as a sanitary attendant. He was not given any appointment letter. In 2009, the cleaning work was outsourced to a cleaning company and so he became redundant. He used to earn Ksh 12,420/= at the time. He was never paid any terminal dues. He sought help from the labour officer and the respondents paid him Ksh 95,889/= but that is not what he was expecting. He says he expected to be paid Ksh 1,049,385/=. He says he was also not issued with a certificate of service or paid his gratuity. He prays that the court orders he be paid the Ksh 1,049,385/=.

In cross examination the claimant told court that he was not given an employment letter but was given an employment card (No 14) in his list of documents. The claimant further told court that the over I million he expects is his house allowance, severance pay, notice pay, leave, off pay etc.

The respondents on the part filed their response to the claim on 26.6.2013 through the firm of Otieno, Yogo, Ojuro and Co. Advocates. They called no witness. Their response is that the claimant was terminated after due process and whilst following the salient provisions of the Employment Act and Labour Industrial Act ant in concurrence with principles of natural justice.

Having heard the evidence of the parties and their submissions thereof, the issues for determination are:-

1. **Whether the termination of the claimant was lawful.**
2. **Whether the claimant is entitled to prayers he has sought.**

On 1st issue the claimant told court that he was terminated on account of redundancy when the respondents decided to outsource the cleaning services where the claimant was formerly employed. Termination on account of redundancy is governed by the provisions of Section 40 of the Employment Act 2007. Under this section the following conditions will pertain:-

**“40 (1). An employer shall not terminate a contract of service on account of redundancy**

unless the employer complies with the following conditions:-

(a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy,

(b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer,

(c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy,

(d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed employee at a disadvantage for being or not being a member of the trade union,

(e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash,

(f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and,

(g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.

There is no indication that the claimant was notified in writing that his services will be terminated. The service were just outsourced and he was left in the cold. This amounts to unfair termination as the procedure envisaged was not followed.

Is the claimant then entitled to remedies he has sought? The claimant is indeed entitled to some remedies as sought. He claimed payment of 3 months pay in lieu of notice which I find he is not entitled to as Section 40 (f) of Employment Act 2007 provides for 1 month's notice and not three months. I therefore find he is entitled to:-

1. 1 month salary in lieu of notice = **Ksh 12,420**
2. Severance pay equivalent to 15 days for each year worked =  $0.5 \times 12,420 \times 18$  = **Ksh 74,520**
3. House allowance = 15% of salary X 216 months =  $1863 \times 216$  = **Ksh 402,408**
4. He should be issued with a certificate of service.

He sought to be paid leave allowances and overtime for which he didn't prove.

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**TOTAL AWARDED = KSH 489,348**

Less already paid and acknowledged - **KSH 95,889**

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**BALANCE = KSH 393,459/=**

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Respondents to meet costs of this suit.

**HELLEN WASILWA**

**JUDGE**

**27/2/2014**

**Appearances:-**

Omayya h/b Odeny for Claimant present

Otieno, Yogo for respondents absent

CC. Wamache