



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 417 OF 2010

BETWEEN

WILLIAM KIPCHIRCHIR KIPSAT
CLAIMANT

VERSUS

TELKOM KENYA LIMITED
RESPONDENT

Rika J

CC. Kidemi.

Mr. Misati instructed by Biwott Korir & Company Advocates for the Claimant

Mr. Melley instructed by Iseme, Kamau & Maema Advocates for the Respondent

ISSUE IN DISPUTE: UNFAIR AND ULAWFUL TERMINATION

AWARD

1. The Claimant initiated the Claim herein against his former Employer Telkom Kenya Limited, in a Statement of Claim filed on 21st April 2010. He filed a List of Documents on 3rd July 2012. The Respondent filed its Statement of Response on 10th June 2010, a Supplementary Statement of Response on 2nd March 2011, and a Supplementary List of Documents on 22nd February 2012. The Claimant was heard on 19th October 2012 and 18th March 2013 when his case closed. The Respondent's Witness Boniface Muendo gave evidence on 29th May 2013, while the last Witness for the Respondent Stella Ndirangu gave evidence on 24th September 2013 when the hearing closed. The dispute was last mentioned on 24th September 2013, when Parties confirmed the filing of the Closing Submissions and were advised by the Court Award would be delivered on notice.

2. Upon consideration of the pleadings, evidence and submissions on record, the *Court Finds*-:

- The Claimant was employed by the Respondent as a Technical Assistant on 11th August 1992.
- He was dismissed on 30th August 2007, on the allegation that he was involved in theft of

Respondent's generators, two pumps and assorted engineering tools

- At the time of dismissal, the substantive Employment Law was the Employment Act Cap 226; the Regulation of Wages and Conditions of Employment Act Cap 229; and Section 15 of the Trade Disputes Act Cap 234 the Laws of Kenya.
- The Claimant seems to invoke the Employment Act 2007 under paragraphs 9 and 15 of the Statement of Claim. His prayers for reinstatement and maximum compensation the equivalent of 12 months' salary are remedies not available under the old Employment Act, which reinforces the position that the Claim is based on the Employment Act 2007.
- This Act came into operation on 2nd June 2008, and would not be available in redressing a termination dispute which arose in August 2007.
- The correct procedure in approaching the Industrial Court would have been under the Trade Disputes Act which was in force in August 2007, and the substantive law would be the Employment Act Cap 226; the Regulation of Wages and Conditions of Employment Act Cap 229; and Section 15 of the Trade Disputes Act, Cap 234- the Laws of Kenya.
- The Claimant has therefore not followed the correct path in coming to Court, and the substantive law pleaded, has no application to the dispute. The Court is unable to assist him.

IT IS ORDERED:-

The Claim is improperly before the Court and is hereby rejected with no order on the costs.

Dated and delivered at Nairobi this 4th day of April 2014

James Rika

Judge