



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**  
**CAUSE NO 2413 OF 2012**

**MUTUNGA MULEI.....CLAIMANT**

**VS**

**INSIGHT MANAGEMENT CONSULTANTS LTD.....RESPONDENT**

**AWARD**

**Introduction**

1. Insight Management Consultants Limited, the Respondent in this case is a provider of human resource services. The Claimant, Mutunga Mulei was employed by the Respondent as a Driver and was based at one of the Respondent's clients by the name Magic Oven. By a Memorandum of Claim dated 27th November 2012 and filed in Court on even date, the Claimant brought a claim against the Respondent seeking compensation for unfair termination of employment and payment of terminal dues.

2. The Respondent filed a Reply on 21st March 2013 and the matter was heard between 7th October 2013 and 8th April 2014. The Claimant testified on his own behalf and the Respondent called its Operations Manager, Jonathan Mwanja Matata and Human Resource Manager, David Onyango Mbalongo. The parties filed written submissions by June 2014.

**The Claimant's Case**

3. The Claimant was employed by the Respondent on 4th April 2012 in the position of Driver at a monthly salary of Kshs. 15,000. On 25th July 2012, the motor vehicle assigned to the Claimant was stolen from the parking yard at a time when the Claimant had gone in another motor vehicle to pick employees at SDV Transami. The stolen motor vehicle was later recovered at Githurai Shopping Centre.

4. The Claimant states that on 26th July 2012, he was summarily dismissed by the Respondent's Manager, a Mr. Alex on allegations that he was involved in the theft of the motor vehicle. The Claimant denies any involvement in the theft of the said motor vehicle and adds that prior to the termination of his employment, he was not offered any opportunity to be heard .

5. He therefore claims the following:

- a. A declaration that the termination of his employment was unlawful and unfair
- b. One month's salary in lieu of notice.....Kshs. 15,000
- c. Unpaid salary for the month of July 2012.....15,000
- d. Damages for loss of employment calculated at 12 months' salary....180,000

- e. Certificate of service
- f. Costs and interest

### **The Respondent's Reply**

6. In its Memorandum of Reply filed on 21st March 2013, the Respondent states that after the theft of its motor vehicle, the Claimant deserted work from 1st August 2012 prompting the Respondent to terminate his employment. The Respondent further states that by the time he deserted duty, the Claimant had been paid all his dues.

### **Findings and Determination**

7. The issues for determination in this case are as follows:
- a. The mode of termination of the Claimant's employment;
  - b. Whether the Claimant is entitled to relief for unfair termination of employment.

### **The Termination**

8. The Claimant claims that his employment was terminated by the Respondent's Manager, a Mr. Alex an allegation that the Respondent denies stating that the Claimant deserted duty soon after the theft of the motor vehicle in question. The Respondent further states that it had no Manager by the name Alex.

9. The Respondent's Human Resource Manager, David Onyango Mbalongo told the Court that the Claimant was based at Magic Oven, with whom the Respondent had a commercial contract for supply of human resource services. Mbalongo further testified that the Claimant's supervisor at Magic Oven was Wycliffe Bikundu.

10. On his part, the Claimant testified that he never met any of the Respondent's managers and supervisors and that during his employment he never went to the Respondent's office. It is therefore possible that he may not have known the names of his supervisor.

11. Further, in view of the outsourcing arrangement between the Respondent and Magic Oven, the Claimant may not have been in a position to differentiate between the managers of the Respondent from those of Magic Oven. The Claimant's claim for unfair termination cannot therefore be discredited by the mere fact that he got the name of the supervisor who terminated him wrong.

12. In its Memorandum of Reply, the Respondent states that the Claimant deserted duty from 1st August 2012 while the Respondent's Human Resource Manager testified that the Claimant deserted duty on 26th July 2012. No explanation was given for this material contradiction and the Court therefore finds the Respondent's account of the circumstances leading to the termination of the Claimant's employment unreliable and untruthful. Consequently, the defence that the Claimant deserted duty is rejected and the Claimant's account that his employment was terminated is upheld.

13. Section 43 of the Employment Act, 2007 provides that:

***(1) In any claim arising out of termination of a contract , the employer shall be required to prove the reason or reasons for the termination and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of Section 45.***

***(2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.***

14. Section 45 (2) of the Act goes on to provide that:

- (2) *A termination of employment by an employer is unfair if the employer fails to prove-*
- (a) *that the reason for the termination is valid;*
  - (b) *that the reason for the termination is a fair reason-*
    - (i) *related to the employees conduct, capacity or compatibility; or*
    - (ii) *based on the operational requirements of the employer and that;*
  - (c) *that the employment was terminated in accordance with fair procedure.*

15. No reason for the termination of the Claimant's employment was advanced and there was no evidence that due process was followed in effecting the termination. The Court therefore finds the termination unfair within the meaning of Section 45 of the Employment Act.

**Reliefs**

16. Having found that the termination of the Claimant's employment was unfair for want of substantive justification and procedural fairness I award him three months' salary in compensation. In making this award, I have taken into account the duration of the Claimant's employment with the Respondent as well as the Respondent's conduct in effecting the termination. I also award the Claimant's one month's salary in lieu of notice and salary for the month of July 2012.

17. Cumulatively I make an award in favour of the Claimant in the following terms:

- a) 3 months' salary in compensation for unfair termination.....Kshs. 45,000
  - b) 1 month's salary in lieu of notice.....15,000
  - c) Salary for July 2012.....15,000
- Total.....75,000**

18. I direct that the Respondent to issue the Claimant with a certificate of service and to pay the costs of this case. The award amount will attract interest at court rates from the date of the award until payment in full.

Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 5TH DAY OF NOVEMBER 2014**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Makokha for the Claimant

Mr. Obunde for the Respondent