



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 1166 of 2012**

**MUTUNE MUSAU ..... CLAIMANT**

**VERSUS**

**DESIGNWEAR LTD..... RESPONDENT**

**JUDGEMENT**

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By a Memorandum of Claim dated 12<sup>th</sup> June 2012 and filed in Court on 10<sup>th</sup> July 2012, the Claimant **MUTUNE MUSAU** alleges that he was employed by the Respondent **DESIGNWEAR LTD** in 2008. He was not given a letter of appointment. He was terminated on 17<sup>th</sup> February 2012. He was paid salary for the 14 days worked in February 2012 and nothing else. His last salary was Kshs.10,868.00. He has produced a payslip for November 2011 and the letter of termination as exhibits 1 and 2 respectively.

The Respondent although served with the Memorandum of Claim and hearing notices as evidenced by the Certificates of Service filed in Court, did not file and reply or attend Court.

The case was heard on 23<sup>rd</sup> November 2012 when the Claimant testified that he worked diligently for the Respondent from 2008 to 14<sup>th</sup> February 2012. On that day the Claimant and 19 other employees were removing furniture and office equipment from the receiving to dispatch sections when one of the supervisors found one person who wanted to remove some things from the premises. When they finished work at lunch time they were told not to go for lunch. The employees asked why they did not detain the person who was seen by the supervisor and let the rest go for lunch or call the police. As a result of asking, the Claimant and 2 other employees were told to remove their uniforms and go away or write a letter of apology. Three days later they were told to go away. He was issued the termination letter on 17<sup>th</sup> February 2012. He claims Kshs.10,868.00 being 1 months' salary in lieu of notice and Kshs.130,320.00 as compensation plus costs and interest.

The letter of termination reads as follows:-

17<sup>th</sup> February, 2012

**Mr. Mutune Musau**

ID.NO.9316351

Dear Sir,

**RE: TERMINATION OF EMPLOYMENT**

Due to an incidence that happened in our warehouse on 14<sup>th</sup> February, 2012, where some goods were stolen while in process of offloading our consignment, they were hidden in the warehouse and the items were found hidden underneath.

The management has decided to terminate your services, as with effect from 14<sup>th</sup> February, 2012.

Your dues will be given to you at the end of this month for the number of days worked.

Yours sincerely,

**DESIGNWEAR LTD**

**FARIDA TAJBHAI**

**ACCOUNTS**

From the letter it is clear that the Claimant was never given an opportunity to defend himself. The letter does not even state that he was the culprit of the attempted theft. Respondent did not comply with the requirements of Section 41 of the Employment Act. The termination of employment was without notice.

I find that the termination was unfair. In the absence of any defense, and taking into account the prayers for payment in lieu of notice and compensation for 12 months both of which are provided for under Section 49 as read with Section 50 of the Employment Act for an employee who has been terminated unfairly, I give judgement to the Claimant against the Respondent as follows:-

1. Salary in lieu of notice - Kshs.10,868.00/=.
2. 12 months' salary as compensation for unfair termination - Kshs.130,416.00/= both adding up to a total of Kshs.141,284.00/=.
3. Filing fees.

Orders accordingly.

Read in open Court this 21<sup>st</sup> day of February 2013.

**HON. LADY JUSTICE MAUREEN ONYANGO  
JUDGE**

In the presence of: - \_\_\_\_\_ Claimant

\_\_\_\_\_ Respondent