



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 843 of 2012**

**PATRICK MATI NGULI.....CLAIMANT**

**VS**

**ST VINCENT CATHOLIC CHURCH..... RESPONDENT**

**AWARD**

1. By a Memorandum of Claim filed in Court on 21st May 2012, the Claimant sued the Respondent for unfair termination of employment and failure to pay terminal benefits. The Respondent did not file a reply and did not attend Court. The matter therefore proceeded *ex parte* on 1st and 26th February 2013, with the Claimant appearing in person.

2. According to the Claimant, he was employed by the Respondent in December 2003 in the position of a night guard at a monthly salary of Kshs. 6,000. He was not issued with a letter of appointment. The Claimant worked as such until August 2011 when the Respondent terminated his employment, without cause and without notice.

3. In his sworn evidence, the Claimant testified that prior to his termination, he had asked for a salary raise which the Respondent declined to grant and instead terminated his employment verbally. The Claimant further testified that at the time of his termination, he was not paid any of his dues.

4. The Claimant called two witnesses in support of his case. Zacheus Kyalo Wang'ombe, a worshiper at the Respondent Church confirmed that the Claimant was employed by the Church as a night guard in December 2003. Wang'ombe testified that the Claimant's appointment and dismissal were announced in the Church. Wang'ombe further testified that he was aware that the Claimant had issues with his salary, adding that the Church Committee told the congregation that arising from these issues, the Committee had decided to terminate the Claimant's employment and assign his duties to the day guard. Fredrick Kiilu told the Court that he accompanied the Claimant to Kituo cha Sheria to seek legal assistance following termination of his employment.

5. The Claimant claimed the following:

- a) Severance pay.....Kshs. 21,000
- b) 1 month's pay in lieu of notice.....6,000
- c) Annual leave.....10,500
- d) House Allowance.....75,600

e) Compensation for unfair termination.....72,000

f) Costs and interest

6. The first issue for determination is whether there was an employment relationship between the Claimant and the Respondent. The Claimant testified that he was not issued with a letter of appointment and that he was paid his salary in cash. In the absence of documentary proof of employment, the Court relied on the viva voce evidence adduced in Court. In this regard, the Court observed the demeanour of the Claimant and his two witnesses and found them to be forthright and truthful. Their evidence was consistent and corroborative. An employment relationship between the Claimant and the Respondent was therefore established.

7. The second issue for determination is whether the termination of the Claimant's employment was unfair. The Claimant told the Court that he was not issued with a termination letter. He also testified that his termination was precipitated by his request for review of his salary. The Respondent did not offer any evidence to the contrary.

8. Section 45 (2) of the Employment Act provides 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 employee's conduct, capacity or***

***compatibility;or***

***(ii) based on the operational requirements of the employer; and***

***(c) That the employment was terminated in accordance with fair***

***Procedure.***

9. From the evidence adduced by the Claimant, the reason for termination of his

employment was not justifiable nor was the procedure of the termination lawful. Put another way, the termination was both substantively and procedurally wrongful. For this reason, I find the termination of the Claimant's employment unfair within the meaning of Section 45 of the Employment Act and award him five month's salary in compensation. I also award him one month's salary in lieu of notice. In addition, I award him service pay at 15 days' pay for each completed year of service as well as annual leave for the entire period of service. The claim for house allowance was not proved and is therefore disallowed.

10. The net effect of this award is as follows:

a) 5 months' pay in compensation

for unfair termination.....Kshs. 30,000

b) 1 month's pay in lieu of notice.....6,000

c) Service pay (6,000/30x15 days x7 years).....21,000

d) Annual leave (6,000/30x21days x 7 years)..... 29,400

**Total.....86,400**

The Respondent will meet the costs of this case and issue the Claimant with a Certificate of Service.

It is so ordered.

**DELIVERED IN OPEN COURT AT NAIROBI THIS 27TH DAY OF MARCH 2013**

**LINNET NDOLO  
JUDGE**

**In the Presence of:**

.....**Claimant**

.....*Respondent*