



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT KISUMU**  
**CAUSE NO. 69/2013**  
*(formerly Nairobi No. 1942/2012)*

**(Before Hon. Justice Hellen Wasilwa on 25<sup>th</sup> June, 2013)**

PETER O. OGIRO .....CLAIMANT

VERSUS

DOMINICAN FRIARS  
VICARIATE OF E. AFRICA .....RESPONDENTS

**JUDGMENT**

The claimant herein Peter O. Ogiro filed his memorandum of claim on 28.9.2012 through the firm of Rakoro & Co. Advocates. The respondents were duly served and on 24.10.2012 a notice of appointment of Advocates was filed on their behalf by the firm of Menezes & Odhiambo Associates. On 25.5.2013, the respondents also filed their memorandum of defense through the same firm and this without seeking any leave from court to file out of time. In the meantime, on 17.5.2013 the claimant took a hearing date for 6.6.2013 and still served the respondents. On 6.6.2013 the respondents failed to attend court and so the case proceeded their absence notwithstanding.

The claimant's case is that he was employed by the respondents on 6.6.2011 as an accountant on a one year renewable contract with effect from 1.5.2011 to 30.4.2012. He finished his first term of this

contract and it was again renewed on 1.5.2012 to end on 30.4.2013. He exhibited a copy of that contract (App. 2). As per the terms of this second contract, his salary was Ksh. 29,768/=. He also annexed a copy of his payslip as an exhibit. He told court that he served the respondents well but his contract was terminated in June 2012 as per App. 6. He averred that before his contract was terminated on 28.6.2012, he had a funeral of his sister-in-law. He wrote a letter App. 5 requesting to be away and was given permission on 28/6/2012 a Thursday to attend the funeral. He was to resume duty on 1.7.2012. He first received a text message from the respondents administrator Mary Kasiragi that he should not report to work without seeing the director. He then reported on 2.7.2012 and went to see the director. He found the director had left for Nairobi but had left behind his termination letter App. 6 which the administrator handed over to him. The administrator asked him to go away but informed him that his terminal dues would be paid. The termination letter indicated that he had not always done his work to their satisfaction. He says he had never been appraised in his work and there were no targets set for him. He avers that he did his work well.

Upon termination, he contacted his union KUDHEIHA who wrote the respondent a letter asking them to pay him all his dues. The letter is annexed as App. 7 dated 3.7.2012. The respondents paid him Ksh 29,000/=. He then went to consult an advocate who wrote the respondents a demand letter dated 27.7.2012. They didn't respond. He then proceeded to court for redress and he seeks to be paid Ksh 371,769 plus costs being compensation for the remaining part of the contract and also seeks to be given a certificate of service. He contends that the termination was not fair and he was never given any warning or any notice to show cause letter before he was terminated.

Having heard the claimant's case herein the issues for determination are as follows:-

1. Whether the claimant's termination was fair and justified in the circumstances.
2. Whether the claimant is entitled to prayers he has sought.

On the first issue the contract between the claimant and respondents is dated 30.4.2012, under this contract the claimant was to serve for a period of 12 months with effect from 1.5.2012 to 30.4.2013. This period included 26 days of paid leave. The claimant was to be on probation for 3 months with effect from the date he reports to work and the contract could be terminated during this period by either party giving 1 day's notice in writing or pay in lieu thereof. After probation period, the contract could be terminated by giving 2 months notice in writing or pay in lieu thereof. The contract further provided that at the end of the contract, the respondent would pay all benefits according to the Employment Act.

As at the time of termination of the claimant, it appear he was still serving his probation period. For this reason, he was entitled to 7 days notice or pay in lieu. Other than this, the claimant was also entitled to be paid his leave that had accrued to that point. The claimant has told court that he was paid Ksh 29,000/= by the respondents. How this figure was arrived at is not explained. However if the claimant was still within probation period, all he was entitled to was the 7 days notice fee plus the leave and if the Ksh 29,000/= he was paid includes this then his termination was not unfair or unjustified.

The remedies the claimant is entitled to are as follows:-

1. **7 days salary** = **Ksh 6,946/=**
2. **4.3 days prorated leave** = **Ksh 4,923/=**
3. **Terminal dues falling within**

**the 2 months served**  $2/12 \times 15 \text{ days}$  = **Ksh 1,984/=**

**TOTAL = KSH 13,853/=**

The claimant should also be issued with a certificate of service. Given that the respondent had already paid the claimant Ksh 29,000/=: which he has acknowledged then there is no outstanding

payments due except for the issuance of a certificate of service which I order the respondents to issue.

**HELLEN WASILWA**

**JUDGE**

**25/06/2013**

**Appearances:-**

Claimant present

N/A Respondents

CC. Sammy Wamache.