



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**  
**CAUSE NO 1512 of 2010**

**DAVID NAMU KARIUKI.....CLAIMANT**

**VS**

**METAL CROWNS LIMITED.....RESPONDENT**

**AWARD**

**Introduction**

1. The Claimant, David Namu Kariuki brought this claim against the Respondent seeking relief for unfair termination of employment. The Respondent filed a Response on 14th June 2011 and the matter proceeded on 16th September 2013 with Mr. Ojienda appearing for the Claimant and Miss Owino for the Respondent. The Claimant testified on his own behalf and the Respondent did not call any witness. Both parties filed written submissions.

**The Claimant's Case**

2. The Claimant was employed by the Respondent as Chief Accountant effective 1st April 2010 at a net salary of Kshs. 140,000 and worked as such until 3rd June 2010 when his employment was terminated without notice and without lawful cause.

3. The Claimant testified that on 3rd June 2010, he found his office locked and the Human Resource Manager, Stephen Mureithi told him verbally that his employment had been terminated. The Claimant was paid Kshs. 35,000 in lieu of seven days' notice.

4. The Claimant claims the following:

- a. One month's salary in lieu of notice (less 1 week paid).....Kshs. 105,000
- b. One year's salary in compensation.....1,680,000
- c. Any other relief the Court may deem just to grant

**The Respondent's Case**

5. In its Response, the Respondent admitted terminating the Claimant's employment on 3rd June 2010 but stated that at the time of termination, the Claimant was serving a six (6) months' probation period.

6. It was the Respondent's case that it was well within its right to terminate the Claimant's employment due to unsatisfactory performance. The Respondent pleaded that it was not bound to give any reasons for the termination. According to the Claimant's letter of appointment, the

Claimant was entitled to only one week's pay in lieu of notice which was duly paid to him.

## Findings and Determination

7. The only issue for determination in this case is whether the termination of the Claimant's employment was undertaken within the law. In the Respondent's

submissions filed on 30th September 2013, the Court was referred to Section 42(1) of the Employment Act, 2007 which exempts an employer from giving notification and audience to an employee prior to termination of a probationary contract.

8. It was common cause that at the time of termination, the Claimant was serving probation. Section 42(4) of the Employment Act, 2007 allows a party to a probationary contract to terminate the contract by giving seven days' notice of termination. The purpose of the provisions on probationary contracts in the Employment Act is to allow parties flexibility to exit from an employment relationship at the initial stages in cases of extreme incompatibility of the parties or inability to perform by the employee.

9. However, probation should not be used by any party to escape from their obligations under the employment relationship. The Claimant was employed by a written letter of appointment but was curiously terminated verbally. In the Respondent's Response to the Claimant's Memorandum of Claim, it was stated that the Claimant was terminated due to non-satisfactory performance. There was however no evidence that this was ever communicated to the Claimant. In fact, the Claimant testified that to this day, he does not know the reason for the termination of his employment.

10. In my view, since the Claimant's employment was formalised in writing, the termination should have been evidenced in writing. In reaching this conclusion, the Court took into account the fact that the position held by the Claimant being, Chief Accountant for the Respondent's Group of Companies, was a senior position within the Respondent's establishment. Such an appointment would not ordinarily be terminated verbally.

11. The Court also took notice that the probation clause in the Claimant's letter appointment was lopsided in as far as it imposed a longer termination notice of one month on the Claimant, while allowing the Respondent to terminate the contract by giving only the statutory notice of seven days. I find this provision unconscionable and substitute the seven days' notice requirement on the Respondent with one month's notice

12. Having faulted the manner in which the Respondent effected the termination of the Claimant's employment, I award the Claimant the equivalent of two (2) months' salary. I also award him three weeks' being notice pay shortfall.

13. Since the Claimant's letter of appointment dated 23rd March 2010 provided for a net salary, the Court concluded that the Respondent had taken responsibility for statutory deductions. This Award is therefore net of statutory deductions which will be borne by the Respondent.

14. Ultimately, I make an award in favour of the Claimant as follows:

a) 2 months' pay in compensation for unfair termination.....Kshs. 280,000

b) 3 weeks' pay in lieu of notice.....105,000

**Total.....Kshs.385,000**

I award the costs of this case to the Claimant.

Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 9TH DAY OF  
DECEMBER 2013**

**LINNET NDOLO**

**JUDGE**

**In the Presence of:**

.....*Claimant*

.....*Respondent*