



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**  
**AT MOMBASA**  
**CAUSE NO. 311 OF 2013**

**HUMPHREY RIUNGU MUKIRA .....CLAIMANT**  
**VERSUS**  
**SPEED STEAM WORLD LTD .....RESPONDENT**

**J U D G M E N T**

**BACKGROUND**

The claimant brings suit against the respondent, his former employer alleging wrongful and unfair termination of employment. He prays for ksh.145,950/ being the accrued employment dues plus damages for unfair termination.

The respondent did not file defence and the matter proceeded exparte on 25/11/2013.

**CLAIMANT'S CASE**

The claimant stated in his testimony that he was employed by the respondent on 15/11/2010 as a security guard. His salary was ksh.7000 per month which was paid in cash after signing his employers book. The employer deducted NSSF and NHIF from his salary but he never remitted a fact he proved by blank NSSF statements. From January 2013 to 10/4/2013 the respondent never paid salary to the claimant. When claimant raised the issue with the respondent he was paid ksh.6000 as part of the salary for January 2013. The claimant then sought legal assistance from a lawyer who served demand notice on the respondent on 15/4/2013.

In response the respondent's manager summoned the claimant to his office and told him that he could not continue working unless he withdraws the case from the lawyer. When the claimant refused to withdraw the case, the manager dismissed him. He therefore brought this case by which he prays for salary arrears for January to April 2013, public holiday worked and leave days outstanding for 3 years, salary in lieu of notice to terminate and compensation for unfair termination all totalling to ksh.145,590/

**ANALYSIS AND DETERMINATION**

The issues for determination that arise from the pleadings and evidence above are:

1. **whether the dismissal of the claimant amounted to unfair and wrongful termination.**
2. **Whether the relief sought are warranted.**

The respondent did not rebut the pleadings and evidence by the claimant. The court therefore relies on the same to find that indeed the dismissal was amounting to unfair and wrongful termination. It was unfair because although the claimant was invited to the office and explained the reason for the intended dismissal by the manger, the reason for dismissal was invalid and unjustified under section 43,45 and 46 of the employment Act.

Section 46 of the Act provides that it is not fair for an employer to dismiss an employee for the reason that an employee has initiated or proposes to initiate a complaint or other legal proceedings against the employer except where it is shown that the said proceedings are irresponsible and without legal basis. In the present case the claimant served a demand notice through his lawyers demanding salary arrears, leave, off days, public holidays and refund of unremitted statutory deductions. The above matters cannot be said to be lacking any legal basis. It was therefore unfair for the respondent to dismiss the claimant for proposing to initiate legal proceedings by a lawyers demand letter.

The termination was also wrongful because failure to serve notice prior to termination, the employer breached the contract.

The second issue for determination is also answered in the affirmative. The claimant has proved that he is entitled to one month notice because his was on a monthly salary. He is also entitled to the salary arrears prayed in the claim for the period between January-April 2013. He will also get cash in lieu of leave for 2½ years served. This is about 53 leave days for which I award kshs.12,133.33.

He will also get his service pay of ksh7000 for the 2 complete years served being worked at the rate of 15 days per year. The prayer for holidays worked was not properly particularized and proved. It is therefore declined. The claim for compensation is awarded but only for 3 months because the claimant confirmed on oath that he got another similar job immediately after dismissal. The claimant is also entitled to a certificate of service.

## **DISPOSITION**

in view of all the above reasons the court enters judgment in favour of the claimant and against the respondent for payment of:

1. **one month salary in lieu of notice .....7,000.00**
2. **salary arrears for January 15th – April 2013.....18,500.00**
3. **service pay for 2 years ..... 7,000.00**
4. **53 days leave ..... 12,133.33**
5. **3 months gross salary for unfair termination....21,000.00**

**65,633.33**

The claimant will also have costs and interest.

**Signed, dated and delivered this 6th day of December 2013**

**ONESMUS MAKAU**

**JUDGE**

