



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 19 of 2011**

(Before: Before Hon. Justice Byram Ongaya on 28<sup>th</sup> August, 2012)

**CAUSE NO. 19 OF 2011**

**JOHN GACHAU GITONGA .....CLAIMANT**

**VERSUS**

**MISS NDUTA MBILE ..... RESPONDENT**

Claimant appearing in person (Mr. Gitonga)

Ms Macheru appearing for the Respondent

**JUDGEMENT**

This is a claim for unfair termination as set out in the memorandum of claim dated 6<sup>th</sup> January, 2011. The claimant bases his claim on the oral contract of employment and the various service orders set out in the statement of claim on minimum wages.

The Claimant has shown in his evidence that there existed a contract of employment between the parties from November 2005 to November 2009. The duty to maintain records of the employment relationship is vested upon the employer and which was not discharged in the instant case.

The Respondent's evidence has been inconsistent and fails to support the claim by the Respondent that there was no employment relationship at all material times.

In particular the Claimant has shown that he invited the Respondent to a conciliatory process which the Respondent failed to take advantage of. The letter Ref. No. AOJ/JGG/2010 dated 29.06.2010 is clear evidence of an ongoing dispute between the parties and concluding in failed conciliatory process.

This Court will encourage employers and employees to amicably resolve their disputes through the conciliatory process through statutory and other mechanisms. The statutory process involving the Labour Officers is not the only path to pursue conciliation and amicable settlement.

In the instant case the Respondent did not take advantage of the conciliation process and the Claimant has proved his case on a balance of probabilities.

Accordingly the Court enters judgment for the Claimant as prayed for in the statement of the claim dated 6<sup>th</sup> January 2011.

A decree shall issue accordingly.

Delivered in Court on 28<sup>th</sup> August, 2012 in the presence of both parties; the Claimant and Ms Macheru Advocates for Respondent.

**DATED** and **DELIVERED** at Nairobi this 28<sup>th</sup> day of August, 2012.

**Byram Ongaya**  
**JUDGE**