

REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI

CAUSE NUMBER 1378 OF 2011

BETWEEN

ERASTUS

NJOROGE.....
CLAIMANT

VERSUS

ENGLISH PRESS LIMITED

..... RESPONDENT

Rika J

CC. *Elizabeth Anyango*

Mr. Erastus Njoroge the Claimant in Person

Mr. George Masese Advocate, instructed by the Federation of Kenya Employers for the Respondent

ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

AWARD

1. Erastus Njoroge filed this Claim in Person, on 12th August 2011. He later engaged Advocates to act for him, who appear to have drifted in and out of the proceedings. The Respondent filed its Statement of Reply on 27th October 2011. The Claimant testified on 19th September 2012. His sole witness Mark Ngaira testified on 4th October 2012, when the Claimant's case closed. The Respondent called its Human Resource Manager Sylvia Mirenja Chegero, who testified on 16th November 2011, bringing the hearing to a close. The Respondent filed its closing submissions on 3rd December 2012, while the Claimant does not appear to have filed any submissions. The matter was last mentioned in Court on 15th January 2012 when the Court advised the Parties Award would be delivered on Notice.

2. Njoroge told the Court he was employed by the Respondent Printing Business, as a Machine Operator, on or about 28th April 2002. He earned a monthly salary of Kshs. 6,000. His contract of employment was terminated at the instance of the Respondent, on 30th May 2007. He claims termination was unfair and unlawful, and contrary to the Employment Act 2007. He prays for a raft of terminal benefits and compensatory damages.

3. The Respondent pointed out in its submissions that the Claim is improperly before the Court. Termination was on 30th May 2007. The Employment Act 2007 came into force on 2nd June 2008. The Claimant cannot therefore seek remedies relying on the Act of 2007. Section 90 of the Law he has relied on would bar his claim through limitation of time.

The Court Finds and Orders:-

4. This Claim is improperly before the Court. It is unsalvageable. Termination was on 30th May 2007. Different substantive and procedural laws were in force then. The main substantive employment law was

the Employment Act Cap 226 the Laws of Kenya. The procedural law, in coming to the Industrial Court, was the Trade Disputes Act Cap 234 the Laws of Kenya. These Laws were repealed in 2007 / 2008. The Employment Act No. 11 of 2007 repealed Cap 226, while the Labour Relations Act No. 14 of 2007, repealed Cap 234.

5. Section 84 of the Labour Relations Act, under Schedule 5, offers guidance on how termination claims arising before the repealing law came into force, are to be handled. Matters pending in the Industrial Court, or which arose before the 2007 / 2008 legislative changes, are to be governed by the repealed law. The Claimant ought therefore to have approached the Industrial Court under the Trade Disputes Act, and sought remedies under the Employment Act Cap 226, and under Section 15 of the Trade Disputes Act which offered the remedies of reinstatement or compensatory damages. The Court regrettably, cannot assist the Claimant in view of these substantive and procedural hurdles. By invoking the Employment Act 2007, the Court agrees with the Respondent, that the Claimant exposed his claim to the limitation of time law, under Section 90. This Claim in the view of the Court is unsalvageable. ***It fails in more than one front. No order on the Costs.***

Dated and delivered at Nairobi this 28th day of June 2013

James Rika

Judge