

REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA
AT NAIROBI
CAUSE NO. 99 OF 2011

WINNIE AKUMU AKETCH.....**CLAIMANT**

Versus

JUMBO AGROVET LIMITED..... **1ST RESPONDENT**

JUMBO AGROVET SACCO LIMITED..... **2ND RESPONDENT**

JUDGMENT

1. The Claimant sued the 1st and 2nd Respondents for unlawful dismissal, terminal dues and SACCO contributions. The Respondents opposed the suit and filed a Memorandum of Appearance and Reply together with a Counter-Claim and Set-Off on 10th February 2011. In the suit the Claimant averred that she had worked for the 1st Respondent and had dutifully contributed to the 2nd Respondent and at the time of the dismissal had Kshs. 109,000/- held to her credit by the 2nd Respondent. The 1st Respondent denied dismissing the Claimant and averred that she resigned from employment on 2nd November 2010. The Respondents sought Kshs. 785,000/- by way of Counter-Claim.
2. The matter appeared before me on 16th December 2013 when the Claimant testified. The Respondents though served were absent. The Claimant testified that she was dismissed and she denied having resigned. The Counter Claim and Set Off was unprosecuted and was dismissed with costs. The Claimant testified that she was employed by the 1st Respondent in 2004 and produced her employment letter which showed her salary as Kshs. 6,000/- per month. She worked from 2004 till 2010 and her salary was Kshs. 12,000/- at the time she left employment. She claimed her co-operative shares from the 2nd Respondent, and house allowance, leave allowance, salary for October 2010 as well as compensation for 12 months from the 1st Respondent. She also sought damages of Kshs. 500,000/- plus costs of the suit.
3. The Claimant was not forthright in her testimony. She testified that she was terminated by the Respondent in 2010. The Respondent however had produced a letter in which the Claimant wrote that she was resigning on 2nd November 2010. The handwritten letter is addressed to a Dr. Ongare of Jumbo Agrovet Limited. She stated in the letter that she was boldly resigning from her position effective 2nd November 2010. A cause of action for unlawful termination cannot be founded on a resignation by an employee. Her suit is therefore a non-starter as relates to her alleged termination. She however was entitled to a refund of her co-op shares and her suit against the 2nd Respondent is successful as she proved beyond a balance of probabilities that the 2nd Respondent held Kshs. 109,000/- to her credit as demonstrated by the letter from the 2nd Respondent produced as an exhibit. She is also entitled to her salary for October 2010 from the 1st Respondent.
4. In the premises I enter judgment for the Claimant against the 1st Respondent for Kshs. 12,000/- and judgment against the 2nd Respondent for Kshs. 109,000/- together with interest from 2nd November 2010 till payment in full. She is entitled to costs of the suit as against the 2nd

Respondent. She will get a half of her costs from the 1st Respondent.

Orders accordingly.

Dated and delivered at Nairobi this **31st** day of **January** 2014

Nzioki wa Makau

JUDGE