



Maoga & 6 others v House Mart Company Limited (Cause 697, 696, 698, 699, 700, 701 & 702 of 2015 (Consolidated)) [2024] KEELRC 2157 (KLR) (16 August 2024) (Judgment)

Neutral citation: [2024] KEELRC 2157 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 697, 696, 698, 699, 700, 701 & 702 OF 2015 (CONSOLIDATED)**

J RIKA, J

AUGUST 16, 2024

BETWEEN

**JEREMIAH ODHIAMBO MAOGA 1ST CLAIMANT
DOMINIC MUNYAO WANZAU 2ND CLAIMANT
ERIC MWANZIA MUTUNGA 3RD CLAIMANT
JACOB OWUOR KUMBA 4TH CLAIMANT
LEONARD KYALO MUIA 5TH CLAIMANT
KING'ALI MUSEMBI 6TH CLAIMANT
ELIJAH MOGERE ORINA 7TH CLAIMANT**

AND

HOUSE MART COMPANY LIMITED RESPONDENT

JUDGMENT

1. The Claims above were presented separately before the Court, in 2015.
2. They were consolidated on 23rd September 2015, with Cause No. 697, designated as the lead file.
3. The Claimants state that, they were employed by the Respondent, as Loaders/Labourers between the years 2011 and 2013. They earned a monthly salary of Kshs. 13,200 each.
4. They were alleged to have loaded 21 extra boxes of goods, to a vehicle that was leaving the Respondent's premises, on 8th November 2013.
5. They were summoned by the Respondent's Human Resource Manager on 12th December 2014, and without a hearing, informed that they had been summarily dismissed.



6. They protested that their role was to load the goods, while verification was done by the Manager and his Clerks.
7. They state that summary dismissal offended the *Employment Act, the Constitution* and Rules of Natural Justice.
8. No letters to show cause issued; no hearing took place; due process was disregarded; and, summary dismissal was extremely harsh.
9. They pray for notice of 1 month; unpaid leave for the period of service; gratuity at the rate of 15 days' salary, for each complete year of service; and compensation equivalent of 12 months' salary.
10. The total amounts claimed for each, except for the 6th Claimant, is Kshs. 211,200. The 6th Claimant's figure is quoted at Kshs. 231,000.
11. The Respondent filed its Statement of Response on 13th November 2015. It is agreed that the Claimants were engaged as Loaders by the Respondent, on diverse dates, as pleaded in their Claim.
12. The Respondent sold various goods to a client, Kamahuha Traders, which were to be loaded to the Truck for delivery. The client was represented by its Employee, Jackson Muturi during the loading. When the Respondent's supervisor took a physical count of the loaded cartons, it was found out that 21 extra cartons had been fraudulently loaded.
13. The Respondent impounded all the goods. On 11th November 2014, it was agreed between the Respondent and its client, that the all the goods be released to the client, subject to payment of the applicable cost of the goods, while criminal proceedings would be instituted against Jackson Muturi and the involved Loaders.
14. In the meantime, the Claimants were requested to make written statements by the Respondent and show cause why, disciplinary action should not be taken against them. The Respondent took into account their explanations, and decided to terminate their contracts. They were all paid their dues.
15. The Respondent urges the Court to dismiss the Claim with costs.
16. The 2nd Claimant, Dominic Munyao Wanzau, gave evidence for the Claimants on 15th December 2022, resting the Claimants' case. The Respondent's Legal Advisor, Mary Muriungi, gave evidence on 5th March 2024, closing the hearing. The Consolidated Claim was last mentioned on 4th April 2024, when the Parties confirmed filing and exchange of their Closing Submissions.
17. Dominic adopted his witness statement and those of his colleagues, in his evidence-in-chief. The statements replicate the contents of the Statements of Claim, as summarized above. He told the Court that the Claimants were not aware of the attempted theft, on loading. They loaded 100 cartons as instructed. They were not heard. They were paid terminal dues, and made to sign blank papers in acknowledgement. They did not discharge the Respondent voluntarily.
18. Cross-examined, he conceded that 121 cartons were loaded, against an order for 100 cartons. He acknowledged payment of terminal dues. He signed on receiving the money. His colleagues too, signed on receiving the money. Redirected, he confirmed that 21 excess cartons were loaded. He did not know who loaded the cartons.
19. Learned Counsel Mary, relied on her witness statement and documents filed by the Respondent, in her evidence. The Claimants were, Casual Employees. The Respondent is a distributor business. They were paid Kshs. 400 daily, which they collected weekly.



20. Cross-examined, she told the Court that the dates the Claimants were employed and exited employment, are not disputed. 21 extra cartons were loaded. The client agreed to pay for the excess cartons. Criminal action would be taken against the Claimants and the client's representative. The Claimants were asked to provide written statements. Redirected, Mary told the Court that it was not disputed that the Claimants were assigned loading duties, when the excess cartons were loaded. The client agreed to pay for the excess cartons.

The Court Finds: -

21. The 7 Claimants were employed by the Respondent, a distributorship business, as Loaders, between the years 2011 and 2013. They earned a daily wage rate, of Kshs. 400, paid weekly.
22. They were assigned loading duties on 8th November 2014. They were instructed to load 100 cartons. On verification by the Respondent's supervisor, 121 cartons were found to have been loaded. The client, Kamahuha Traders' order was for 100 cartons. An extra 21 cartons were loaded. The client was represented by its Employee, one Jackson Muturi.
23. The 2nd Claimant was not a truthful witness. He told the Court that, "we loaded 100 cartons." On cross-examination, he conceded that 21 extra cartons were loaded. The client agreed that 21 cartons were loaded, and eventually agreed to pay for them, while criminal proceedings were contemplated against Jackson Muturi and the Claimants.
24. Any reasonable man would conclude that the Claimants and Jackson Muturi, colluded to defraud the Respondent, of 21 cartons of its goods. There were no other Employees, except the Claimants, who loaded the goods. The evidence given by the 2nd Claimant, on behalf of the Claimants, was inculpatory. It leaves the Court with no doubt that the Claimants conspired to steal from their Employer. They committed an employment offence, an act of gross misconduct, under Section 44 [4] [g] of the *Employment Act*. The Respondent had valid reason to summarily dismiss them, under this provision, read with Section 43 of the *Act*.
25. On procedure, the Claimants were invited to make individual statements which they declined. They in any event concede, through the 2nd Claimant, that they were assigned loading duty, and that they loaded 21 extra cartons. Once such an admission is made, there is no need for a hearing, because the outcome, summary dismissal on account of gross misconduct, would not be affected by a formal disciplinary hearing. There were no triable facts, to be ascertained through a disciplinary hearing. The letter of summary dismissal specified that the decision taken against the Claimants, was made under Section 44 [4] [g] of the *Employment Act*. There was nothing to be tried, the offence of gross misconduct having been established, through admission made by the Claimants.
26. In the end, the Claimants were paid terminal dues. They acknowledged payments. Dominic confirmed that all the Claimants received payment, acknowledged receipt and executed discharge. The discharge vouchers uniformly read, "I declare that this is the final payment... I do not have any other dispute with the company..." This was on 17th December 2014. There was a valid and binding contract, that there would be no future litigation, between the Parties, upon the Claimants being paid what they received.
27. So why did the Claimants present this consolidated dispute against the Respondent, a short while later, from April 2015? Claims that are presented in disregard of valid discharge agreements, are vexatious and must be discouraged.

It Is Ordered: -

28. ...



- a. The Claim is declined.
- b. The Claimants to pay nominal costs of Kshs. 10,000 each, to the Respondent.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 16TH DAY OF AUGUST 2024.

JAMES RIKA

JUDGE

Court Assistant: Richard Kirui

Namada & Company Advocates for the Claimants

Oraro & Company Advocates for the Respondent

