

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. E076 OF 2023

(Before D.K.N. Marete)

VINOD MANJI RABADIYA.....CLAIMANT

VERSUS

ASTRAL INDUSTRIES LTD.....RESPONDENT

JUDGMENT

This matter was originated by way of a Memorandum of Claim dated 3rd February, 2023. It does not disclose any issue in dispute on its face.

The Respondent in a Respondent's Reply to claim dated 20th February, 2023 denies the claim and prays that it be dismissed with costs.

The Claimant's case is that he was employed by the Respondent as a Sales Manager, Nairobi, a position he held up to 4th October, 2022. As at August, 2022, he earned Kshs.172,000.00.

The claimant's further case is that on 26 March 2022, the Respondent wrote to the Claimant requiring him to account for finances received from the Respondent in respect to NTSA motor vehicle inspection certificates. This letter was only a letter requiring the Claimant to offer an explanation and not a show cause letter. He responded to this letter on 12th April, 2022 and explained how the shortage arose. Thereafter the Respondent and Claimant entered into an Agreement that the sum of Kshs.15,000.00 would be deducted from the Claimant's salary in full.

The Claimant's other case is that on 4th October, 2022, he was served with a letter of summary dismissal on grounds of negligence of duty and dishonesty. This was also in reference to earlier letters dated 26th March, 2022 and 12th April, 2022. Whereas the dismissal was based on earlier

misconduct on the part of the Claimant, he avers that this has been amicably resolved by the parties on the agreement that he would repay the monies involved. The fresh matters complained of in the letter of dismissal were never investigated and the Claimant was not given an opportunity to defend himself.

The Claimant further avers that on 6th October, 2022, he was notified that his photograph and name were appearing in the Daily Nation newspaper cautioning members of the public not to interact with him since he was no longer an employee of the Respondent. These notices were also appearing in the Respondent's social media pages and also the directors (Naran LaximanVekaria) whatsapp status. This did not paint well of the Claimant's character.

The Claimant's other case comes out thus;

- That he had a legitimate allegation that the process commences vide the letter of 26th March, 2022 would be pursued and he be allowed to continue his service agreement.
- The Respondent withheld his three (3) months salary prior to the termination of employment.
- The Respondent instituted unfounded criminal charges where the claimant was questioned the officers from the DCI. These allegations have never been the subject of any disciplinary proceedings.
- It is his case that the Respondent's action of termination was a breach of constitution, the Employment Act, 2007 and the Respondent's Staff Regulations and Policies.

He claims as follows;

- i. *Month's pay in lieu of notice.....Kshs.172,000.00*
- ii. *3 months unpaid salary.....Kshs.56.000.00*
- iii. *Overtime (3 hours per day, 6 days per week)Kshs.9.234.000.00*

- iv. *Compensation for unfair termination (equal to 12 months salary)*
.....Kshs.2,064,000.00
- v. *Damages for violation of labour rights as enshrined in the constitution*
- vi. *Damages for defamation*
- vii. *Certificate of Service pursuant to section 51 of the Employment Act.*

He prays thus;

- i. *Special damages and general damages as pleaded in paragraph 10 hereof*
- ii. *Costs of the Suit*
- iii. *Interest on i. and ii above at court rates.*

The Respondent's case is a denial of the claim.

It is their case that the Claimant, during his stint of employment was not complying with his terms of employment and also did not observe due care as expected of his position. All due legal and procedural requirements and disciplinary process were pursued before the issue of the letter of dismissal to the Claimant. The Claimant's case at paragraph 7 of memorandum of claim is an indicator that he was not conducting himself as an employee.

The Respondent's further case is a denial of posting any notices on its social media pages and further that if any notices were posted, the information therein was correct and not scandalous or demeaning. These did not in any way lower the Claimant's esteem or affect his chances of acquiring alternative employment. Other issues raised by the Respondent include;

- That they also had a legitimate expectation that the Claimant would perform his duties dedicatedly without involving himself in act of mischief like was the case.
- The Claimant was wholly to blame for all this.

- The issue of misappropriation of funds was reported to the relevant authorities and investigations were conducted by the DCI.
- The termination of the employment of the claimant was done in accordance with the law and he was awarded an opportunity to be heard as required of the law.

The issues for determination therefore are;

1. Whether the termination of the employment of the claimant by the Respondent was wrongful, unfair and unlawful.
2. Whether the claimant is entitled to damages for defamation.
3. Whether the claimant is entitled to the relief sought.
4. Who bears the costs of the claim?

The 1st issue for determination is whether the termination of the employment of the claimant by the Respondent was wrongful, unfair and unlawful. The claimant in their written submissions dated 8th April, 2025 brings out a case of unlawful termination of employment which is totally denied by the Respondent.

It is the claimant's submission that he received a show cause letter dated 26th March, 2022 requiring him to account for finances from the Respondents in respect to NTSA motor vehicle inspection certificates and also why disciplinary action should not be taken against him on this. He responded to this but was again required by the Respondent to submit a more detailed answer which he did via the email dated 12th April, 2022. This was followed by an agreement *inter partes* in which he was required to pay the monies by monthly deductions of Kshs.25,000.00 from September, 2022 to August, 2023.

The claimant submits that despite the repayment agreement, he was served with a summary dismissal letter dated 4th October, 2022 listing a couple of charges against him but also acknowledging that the parties had agreed on a repayment of the entire sum by monthly instalment deductions of Kshs.25,000.00 from the claimant's salary every month. This was a violation of the procedural requirement accorded to him by section 41(1) and (2) of the Employment Act, 2007 for not affording him a chance to defend himself prior to such dismissal. The claimant seeks to rely on the authority of **Nicholus Muasya Kyula vs Farmchem Ltd [2012] eKLR** which emphasized the requirements of procedural fairness which must be conducted and communicated to the employee before dismissal.

The claimant further submits that the press, whatsapp, facebook, and Instagram publications by the Respondent were defamatory to the claimant and therefore his entitlement to damages and relief as sought in the claim.

The Respondent in their written submissions dated 24th April, 2025 submits that the claimant dismissal on 4th October, 2022 followed investigations into financial misappropriation, a warning letter dated 26th March, 2022 and the claimant email requesting salary deductions to repay the stolen funds. This was followed by a management resolution dated 5th May, 2022 confirming the claimant failure to account for company funds and a reference of the matter to the authorities culminating in a charge sheet in Milimani Criminal case No. E079 of 2023.

The Respondent further submits compliance with section 41, 43 and 45 of the Employment Act, 2007 in that;

- The claimant was found to have misappropriated company funds
- The claimant admitted the misappropriations and requested a deduction of the lost funds from his salary.

- He was issued with a disciplinary letter dated 26th March, 2022 warning him of the misconduct.
- The management in a ruling/decision dated 5th May, 2022 noted is failure to account for the funds.
- He was subjected to disciplinary proceedings before summary dismissal.
- He was subsequently charged in court for theft by servant.

So far so good. In as much as this court appreciates the various transactions and events leading to a termination of the employment of the claimant, it becomes notable that there is no element or evidence of disciplinary proceedings against the claimant. This dents the process of termination of employment in the circumstances. There is no formal documentation or minutes of any meeting where disciplinary proceedings were had and recorded. The absence of evidence of a structured disciplinary process where the claimant was openly afforded an opportunity to answer his accusations faults the Respondent's case.

Moreover, the claimant's case and submissions is that the dismissal was based on issues that had been resolved by the parties culminating in an agreement that he would refund the monies lost. This misconduct had been acquiesced by the Respondent and therefore would not apply in a case of termination of employment. It would appear that there are some missing links in this case of summary dismissal. It was as disorganized as it was clumsy. Employees would always require clarity and sequence in such a determinate case of termination of employment. A situation of back and forth like we have here would not amount to procedural termination of employment. I therefore find a case of wrongful, unfair and unlawful termination of employment and hold as such.

The 2nd issue for determination is whether the claimant is entitled to damages for defamation. The claimant through and through brings out a case of defamation and seeks damages to this extend.

The Respondent in rebuttal denies this and submits that the publications, if at all, were innocent, factual and truthful statements that were intended to set the record straight and secure the Respondent’s business practices. I would agree. The nature and wording of the statement published were not intended to demean or hurt the character and person of the claimant. These were innocent and matter of fact and I find as such.

The 3rd issue for determination is whether the Claimant is entitled to the relief sought. He is. Having won on a case of unlawful termination of employment, he becomes entitled to the relief sought.

I am therefore inclined to allow the claim and award relief as follows;

- (i) One (1) months salary in lieu of noticeKshs.172,000.00
- (ii) Two (2) months salary as compensation for unlawful termination of employment
.....Kshs.172,000.00 x2.....Kshs.344,000.00
- Total of awardKshs.516,000.00**

Delivered, dated and signed this 19th day of November 2025.

D. K. Njagi Marete
JUDGE

Appearances:

1. Ms Ngeresa instructed by Ngeresa & Okallo Associates for the Claimant.

2. Miss Wamukore holding brief for Owiti instructed by Betty Wamukore & Owiti Advocates for the Respondent.