

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NAIROBI**

**CAUSE NO. E053 OF 2022**

**NEOGOLER BEARVERLY OTIENO.....CLAIMANT**

**VERSUS**

**HAZINA SACCO SOCIETY LIMITED.....RESPONDENT**

**JUDGMENT**

The Claimant remains unemployed, his employment having come to an end upon the Claimant being arrested on 1/3/2018 and arraigned at Milimiani Magistrate's Court on 2/3/2018 in Criminal Case No. 369 of 2018 with conspiracy to defraud under section 317 of the Penal Code.

The Claimant filed suit dated 22/3/2022 seeking the following reliefs:-

- a) Reinstatement and/or in the alternative and without prejudice;
- b) A declaration that the Claimants rights and guarantee for fair labour practices and reasonable working conditions under Article 41(2) (a) and (2) (b) of the Constitution have been violated, remain violated by the Respondent;
- c) A declaration that the Claimant's right to be treated with dignity as provided for under Article 28 and 54(1) of the Constitution has been and remains violated and threatened by the Respondents
- d) The full salary with effect from 1<sup>st</sup> March, 2018 to the date of the judgment at Kshs. 97,786.00 per month.

- e) In the alternative, an order to be issued compelling the Respondent to pay the Claimant a sum equivalent to the unexhausted statutory working years until the age of 60 as a guarantee at Kshs. 97,786.00 per month.
- f) Special damages as enumerated hereunder
  - (i) Payment of one month salary in lieu of notice Kshs. 97,786.00
  - (ii) Unpaid salary from 1<sup>st</sup> March 2018 Kshs. 4,498,156.00
  - (iii) Unpaid leave for each full year worked Kshs. 4,498,156.00
  - (iv) Breach of contract Kshs. 14,000,000.00

**Total Kshs. 23,094,098.00**
- g) General damages
- h) Cost of this suit
- i) Interest at court rates until payment in full
- j) Any other/further relief that this honourable court can grant.

The Claimant in his testimony adopted witness statement dated 25/1/2022 as his evidence in chief and produced exhibits '1' to '9' in support of his case.

The Claimant stated that he was employed by the Respondent on 22/1/2014 as Assistant Accountant and was paid Kshs. 70,388.00 consolidated salary. That he was promoted to various positions and his salary was increased to Kshs. 97,786.00 as per the payslip before court. That he had no warning letter and had a clear record of work until the time of his arrest and arraignment on 2/3/2018. That the trial proceeded and he

was acquitted of the charges as per the judgment of the Chief Magistrate before court.

That he was suspended from work upon being arrested and received no salary during the period of suspension. That he was never taken through a disciplinary process by being given notice to show cause or being called to a hearing. The Claimant said that he did not receive any letter of summary dismissal from the Respondent. The Claimant said he is only aware of the suspension and not any dismissal.

That the acquittal was on 7/1/2022. That the Director of Public Prosecutions filed notice of appeal of the decision but the appeal has never been heard. The Claimant denied any wrong doing as alleged or at all and relies on the judgment of the Chief Magistrate as evidence of his innocence.

That upon acquittal, himself and his co-accused wrote to the Respondent seeking payment of arrear salary and reinstatement to their jobs. That the Respondent ignored their letters hence the suit.

The Respondent called Jackline Bithe in defence of the case. She testified that she was a Human Resource Officer of the Respondent and adopted a witness statement dated 22/3/2022 as her evidence in chief. RW1 also produced exhibits '1' to '7' filed on 22/3/2022 in support of the case.

The court made an interlocutory ruling stopping production of items '1' and '2' in the list of documents dated 23/3/2022 being notice to show cause and Human Resource Manual, the same having not been filed and served on the Claimant until the close of his case. RW1 said that the Claimant had previous warning following notice to show cause dated 9/2/2018 which was responded to by the Claimant on 10/2/2018. That the matter related to wrongful opening of an account by the Claimant which was used to steal money from the Respondent and the subject of the criminal charge. RW1 said that the Claimant was acquitted on the criminal charges facing him but there was a pending appeal by the Director of Public Prosecutions in Criminal Appeal No. E005 of 2022 before the High Court. RW1 said that the Claimant was issued a letter of summary dismissal.

Under cross-examination, RW1 said the Claimant was suspended from employment following suspicion he was stealing money from the employer. That the Claimant was charged in a criminal court. That the Claimant was acquitted of the charges on 7/1/2022. That Director of Public Prosecution has appealed the decision. RW1 said that the Respondent did not have Claimant's email address while he was away on suspension. RW1 said no disciplinary hearing was held but there was a meeting between the Claimant and the Chief Executive Officer (CEO) of the Respondent that led to a show cause letter issued to the Claimant. RW1 did not have the show cause letter before court but said no disciplinary hearing took place following the arrest and criminal charges brought against the Claimant. The was summarily dismissed by a letter dated 7/3/2018 and she called the Claimant several times to come and receive it but he did not do so.

## **DETERMINATION**

The parties filed written submissions which the court has carefully considered together with the evidence adduced by CW1 and RW1. The issues for determination are: -

- (a) Whether the summary dismissal of the Claimant was lawful and fair
- (b) Whether the Claimant is entitled to payment of his full salary upon being acquitted on the criminal charges brought against him.
- (c) What other reliefs is the Claimant entitled to.

The evidence before court is that the Claimant held the position of loans monitoring and recovery officer earning a consolidated salary of Kshs. 97,786.00. That on 1/3/2018, the Claimant was arrested on suspicion of theft by servant and was charged before Chief Magistrate Court at Kibra In Criminal Case No. 367 of 2018. That following the arrest, the Claimant was suspended from work with no pay. That the Claimant did not go through a disciplinary process while the criminal trial was under way. The Claimant was acquitted of the charges of theft on 7/1/2022. That the Director of Public Prosecution filed an appeal against the judgment acquitting the Claimant and other co-accused in Criminal Appeal No. E005 of 2022 before the High Court, which Appeal is still pending.

The Claimant did not collect the letter of dismissal to date. The Claimant testified that upon being acquitted he wrote a letter to the Respondent demanding his arrear salary and he be reinstated to his work.

RW1 in her testimony said that the Respondent did not have address of the Claimant while he was away on suspension. RW1 said that the Respondent dismissed the Claimant from employment by a letter dated 7/3/2018 following the Claimant's arraignment for theft. That the dismissal was summary. RW1 said that they called the Claimant to come and receive the letter of dismissal on several occasions but the Claimant failed to collect the letter.

RW1 produced a letter dated 28/3/2018 asking the Claimant to come and receive the letter. RW1 said that Respondent did not have an email address to send that letter of dismissal and the follow up letter to the Claimant.

The court finds that the evidence by RW1 that the Board had considered the case against the Claimant and made a decision to summarily dismiss the Claimant credible and truthful. RW1 was candid that no disciplinary hearing took place prior to the dismissal. The Claimant however never received the letter of summary dismissal until the matter came to court.

The issue of limitation was not raised by any party and correctly so because it was in dispute whether the Claimant was aware of the letter of summary dismissal or not. The court having conducted the full hearing of the suit finds that, the fact of acquittal, in a criminal trial where the standard of prove is beyond reasonable doubt does not necessarily absolve the Claimant from any charge of misconduct related to criminal charges from which the claimant was acquitted.

The Respondent, however, had chosen not to take the Claimant through a disciplinary hearing before summarily dismissing him. The Respondent violated sections 41, 43 and 45 of the Employment Act, 2007 in that regard and the summary dismissal was not for a valid reason established in a fair disciplinary process.

Accordingly, the court finds that the summary dismissal was unlawful and unfair. That the Claimant had a clean record up to the time of his arrest and arraignment, a period of 4 years from the date of his employment on 22/1/2014. The Claimant had been promoted from position of Assistant Accountant to loans monitoring and recovery officer and earned Kshs. 97,786.00 as at the time of summary dismissal. The Claimant having been acquitted of any wrong doing in the criminal process and having not been subjected to any disciplinary hearing, the court finds that the Claimant did not contribute to his summary dismissal.

The court having considered that the Claimant could not work while he underwent a criminal trial and other factors herein including the case of **Juma Katuku v Kenya Steel Company (2006) Ltd (2022) KEELRC 308 KLR** where the Court held that;

**“In the present case, the Respondent is not shown to have complied with the mandatory procedural provisions of Section 41 of the Employment Act 2007. The Respondent did not defend the suit. The Claimant was discharged from the criminal charges preferred against him at the Respondent’s instigation...**

**On the second issue, it is my finding that the Claimant is entitled to compensation for unfair termination of employment and to one month salary in lieu of notice. I award the Claimant twelve months' salary as compensation for unfair termination of employment, in view of the circumstances under which his employment was terminated",**

awards the Claimant the equivalent of 12 months' salary in compensation for the unlawful and unfair summary dismissal in the sum of Kshs. 1,173,360.00.

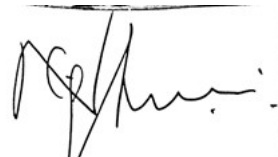
The court also awards the Claimant one month salary in lieu of notice in the sum of Kshs. 97,780.00.

For the avoidance of doubt all other reliefs sought by the claimant lack merit and are dismissed.

**In the final analysis, Judgment is entered in favour of the Claimant against the Respondent as follows: -**

- (a)Kshs. 1,173,360.00 in compensation**
- (b)Kshs. 97,786.00 in lieu of one-month notice**
- (c)Interest at court rates from date of judgment till payment in full.**
- (d)Costs of the suit.**

**Dated at Nairobi this 20th day of April 2026**



**Mathews Nduma**

**JUDGE**

**Dated, signed and delivered in open court at Nairobi this 22<sup>nd</sup> day of April 2026**

**Dr. Gakeri J.**

**JUDGE**

**Appearances:**

Mr. Lusweti for Claimant

Mr. Mukonyi for Respondent

Mr. Kemboi – Court Assistant

ORIGINAL