



**Wandeto v LC Waikili Ltd (Cause E092 of 2023)
[2024] KEELRC 448 (KLR) (21 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 448 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E092 OF 2023
DKN MARETE, J
FEBRUARY 21, 2024**

BETWEEN

BERNARD WANDETO CLAIMANT

AND

LC WAIKILI LTD RESPONDENT

JUDGMENT

1. This matter came over by way of Memorandum of Claim dated 27th January, 2023. It does not disclose any issue in dispute on its face.
2. The Respondent in a Respondent’s statement of Defence dated 17th April, 2023 denies the claim and prays that it be dismissed with costs.
3. The Claimant’s case is that the year 2018, he was employed as a cashier by the Respondent. On 6th February, 2022, he was promoted to Head cashier and stationed at the Junction Mall Branch.
4. The Claimant’s other case his contract of employment was terminated on 13th December, 2022 through a disciplinary committee sitting that recommended his termination of employment contract. He denies breach of the contract in his part and deems the termination unlawful. He even denies terminal dues despite demand.
5. The Claimant further submits as follows; The disciplinary procedure was unfair and unprocedural. That he was not given any notice of termination or paid any dues in lieu of the requisite notice. He was never given any valid reason for termination from employment. The termination was discriminatory as his co-accused was only served with a warning letter.
6. He prays thus;
 - a. that the court issues a declaration that the claimant was unfairly terminated



- b. The Respondent be compelled to pay the claimant general Damages for unlawful and unfair termination to a tune of 999, 252 calculated at the rate of ksh 83,271/=p.mx12 months.
 - c. The Respondent be compelled to pay the claimant an amount of ksh 83,271/= being one month's pay in lieu of termination of employment.
 - d. Costs of the claim.
 - e. Interest of award of judgment at court rate from date of filing this claim.
 - f. Such other or further relief as this court may deem just to grant.
7. The Respondent's case is that the claimant as an employee of the Respondent was required to follow the Respondent Rules and Guidelines in the dealing as an employee in his dealing with the Respondent and his business.
 8. It is the Respondent further case that on 3rd September, 2022 the claimant bought a long trouser from the Respondent but introduced a discount on the same on 14th September instant thereby reducing his price.
 9. It is the Respondent's case that later the Claimant irregularly got an exchange of the material he had bought without involving or adhering to the relevant guideline on the exchange in establishment. He did not involve his seniors or other personnel required for such dealings. This was viewed as irregular and fraudulent and the Claimant was subjected to due disciplinary process culminating in his termination in employment.
 10. The Claimant is therefore not entitled to this claim or even the relief sought and the same ought to be dismissed with costs.
 11. Issues for determination therefore are;
 1. Whether the termination of employment of the claimant by the Respondent was wrongful, unfair and unlawful.
 2. Whether the claimant is entitled to the relief sought.
 3. Who bears the costs of this cause.
 12. The 1st issue for determination is whether the termination of employment of the claimant by the Respondent was wrongful, unfair and unlawful. The claimant submits a case of a unlawful termination of employment and posit that the process of the exchange he performed at the Respondent's Shop was procedural and at per.
 13. The Claimant's further submits that no valid reason was adduced for the termination of employment and in this case sought to rely on authority of *Galgalo Jarso Jillo v Agricultural Finance Corporation* [2021] eKLR where the issue of valid reason for termination was emphasised. This is as per Section 43(2) of the *Employment Act*, 2007.
 14. The Respondent borrows from the response and submits a sequential seven points procedure for exchange of products in her establishment. She further reiterates her case that the claimant in exchange for the long trouser that he had bought from the Shop singly involved himself and did not refer to the procedure or any other person. This culminated in disciplinary procedure where he was found culpable and dismissed from employment.



15. The Respondent's case overwhelmed that of the Claimant. She has on a balance of probability and preponderance of evidence established a case of lawful termination of employment and i find as such.
16. The 2nd issue for determination is whether the claimant is entitled to the relief sought. He is not. Having lost on a case of unlawful termination of employment, becomes disentitled to the relief sought.
17. I am therefore inclined to dismiss the claim with orders that each party bears the costs of the same.

DELIVERED, DATED AND SIGNED THIS 21ST DAY OF FEBRUARY 2024.

D. K. NJAGI MARETE

JUDGE

Appearances:

1. Mr. Nganga Kamau instructed G.N Kamau and Associates Advocates for the Claimant.
2. Mr. Wachira instructed by Munyaka Advocates LLP for the Respondent.

