



**Njenga & 4 others v Motor Boutique Limited (Cause 1707,
1701, 1702, 1704, 1705 & 1706 of 2013 (Consolidated))
[2024] KEELRC 2206 (KLR) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2206 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1707, 1701, 1702, 1704, 1705 & 1706 OF 2013 (CONSOLIDATED)
L NDOLO, J
SEPTEMBER 19, 2024**

BETWEEN

**JOHN WAWERU NJENGA 1ST CLAIMANT
SHEM CHAHENZA AUGOGO 2ND CLAIMANT
JOHN MWANGI WAGATUA 3RD CLAIMANT
JOHN GAKOMBO GITHARA 4TH CLAIMANT
ANTHONY SHITETI KOMBO 5TH CLAIMANT**

AND

MOTOR BOUTIQUE LIMITED RESPONDENT

JUDGMENT

Introduction

1. This consolidated claim is brought by John Waweru Njenga, Edwin Opiche Agina, John Gakombo Githara, Anthony Shiteti Kombo, Shem Chahenza Amugogo and John Mwangi Wagatua against their former employer, Motor Boutique Limited.
2. In their respective claims, the Claimants accuse the Respondent of unlawful termination of employment and failure to pay their terminal dues. The Respondent denies the claims by way of a Statement of Defence dated 27th November 2013.
3. At the trial, the Claimants testified on their own behalf and the Respondent called Amos Momanyi.



The Claimants' Case

4. The Claimants were employed by the Respondent on diverse dates between 2007 and 2009. They were deployed in the Respondent's stores where they worked until 6th July 2013, when their employment was terminated.
5. The Claimants' case is that the termination of their employment was unlawful and unfair. They therefore claim the following:
 - a. A declaration that the termination of their employment was unlawful and unfair;
 - b. 12 months' salary in compensation;
 - c. 1 month's salary in lieu of notice;
 - d. Leave pay;
 - e. Severance pay;
 - f. Certificates of service;
 - g. Costs of the claim.

The Respondent's Case

6. In its Statement of Defence dated 27th November 2013, the Respondent admits having employed the Claimants as pleaded in the Memorandum of Claim. The Respondent however denies the Claimants' claim of wrongful dismissal. It is alleged that the Claimants were engaged in a well-coordinated scheme to deprive the Respondent of its property, occasioning great loss to the Respondent.
7. The Respondent avers that it complied with Section 41 of the *Employment Act*, by taking into account the Claimants' explanation on missing items. In this regard, it is alleged that a meeting took place on 5th July 2013 but the Claimants did not sufficiently exonerate themselves from culpability.
8. Further, the Respondent states that all terminal benefits due to the Claimants were computed and paid out accordingly. Part of the dues are said to have been remitted to Sacco loan recovery.
9. The Respondent states that despite the Claimants' actions being in the nature of gross misconduct within the meaning of Section 44(4)(g) of the *Employment Act*, it reduced the summary dismissal to normal termination.

Findings and Determination

10. There are two (2) issues for determination in this case:
 - a. Whether the termination of the Claimants' employment was lawful and fair;
 - b. Whether the Claimants are entitled to the remedies sought.

The Termination

11. It is common cause that the termination of the Claimants' employment was occasioned by an alleged loss of stock from the Respondent's stores, where the Claimants were deployed. This allegation falls under the broad category of misconduct and the benchmark in dealing with such cases was restated



by the Court of Appeal in its decision in Pius Machafu Isindu v Lavington Security Guards Limited [2017 eKLR in the following terms:

“There can be no doubt that the Act, which was enacted in 2007, places heavy legal obligations on employers in matters of summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for termination/dismissal (section 43); prove the reasons are valid and fair (section 45); prove that the grounds are justified (section 47(5), amongst other provisions. A mandatory and elaborate process is then set up under section 41 requiring notification and hearing before termination.”

12. Amos Momanyi, who appeared as a witness for the Respondent, did not produce any document to show that he was authorised to testify. More significantly, he did not avail a record of the items said to have been lost through the Claimants’ actions. In addition, there was no record of the disciplinary proceedings leading to the termination of the Claimants’ employment. In particular, there were no show cause letters, notice of charges or minutes of any disciplinary meeting.
13. Momanyi’s testimony that the Claimants attended a disciplinary meeting on 6th July 2013, was therefore uncorroborated and unconfirmed. The Claimants consistently denied attending any such meeting and the Court had no reason to disbelieve them.
14. With the foregoing in view, I find and hold that the alleged reason of termination of the Claimants’ employment was not proved at the shop floor as required. The termination was therefore unlawful and unfair.
15. Regarding the issue of terminal dues, the Respondent claims that the payments due to the Claimants were tabulated and paid to NAKU Sacco to offset the Claimants’ indebtedness. The Claimants disagree with the Respondent’s action on several fronts; first, the Claimants had not agreed to this arrangement; second, the Sacco had its own recovery methods through guarantors; and third, there was no evidence that the withheld funds had been remitted to the Sacco.
16. It is not in dispute that NAKU Sacco was not a party in these proceedings and the Respondent did not produce any agreement authorising it to withhold the Claimants’ terminal dues on behalf of the Sacco.
17. Consequently, I find and hold that the Respondent had no legal basis to withhold the Claimants’ terminal dues on account of alleged indebtedness to a third party.

Remedies

18. Pursuant to the foregoing, I award each Claimant six (6) months’ salary in compensation for unlawful and unfair termination of employment. In making this award, I have taken into account the Claimants’ length of service and the Respondent’s action of bringing the employment relationship to an end, without affording the Claimants an opportunity to defend themselves. I have further taken into account the Respondent’s failure to pay the Claimants their terminal dues as required by law.
19. Additionally, the Claimants are entitled to gratuity, notice pay, leave pay and salary for days worked as contained in the tabulation produced by the Respondent.
20. Ultimately, I enter judgment in favour of the Claimants as against the Respondent as follows:
1st Claimant: John Waweru Njenga



- a. 6 months' salary in compensation Kshs.196,500
 - b. Gratuity Kshs.170,152
 - c. Notice pay Kshs.35,076
 - d. Salary for days worked Kshs.6,298
- Total Kshs.408,026

2nd Claimant: Shem Chahenza Amugogo

- a. 6 months' salary in compensation Kshs.170,371
 - b. Gratuity Kshs.60,728
 - c. Notice pay Kshs.30,364
 - d. Leave pay Kshs.5,820
 - e. Salary for days worked Kshs.5,461
- Total Kshs.272,744

3rd Claimant: John Mwangi Wagatua

- a. 6 months' salary in compensation Kshs.170,371
 - b. Gratuity Kshs.30,364
 - c. Notice pay Kshs.15,182
 - d. Leave pay Kshs.5,820
 - e. Salary for days worked Kshs.5,461
- Total Kshs.227,198

4th Claimant: John Gakombo Githara

- a. 6 months' salary in compensation Kshs.206,400
 - b. Gratuity Kshs.147,664
 - c. Notice pay Kshs.55,374
 - d. Leave pay Kshs.7,076
 - e. Salary for days worked Kshs.6,615
- Total Kshs.423,129

5th Claimant: Anthony Shiteti Kombo

- a. 6 months' salary in compensation Kshs.170,370
 - b. Gratuity Kshs.40,485
 - c. Notice pay Kshs.15,182
 - d. Salary for days worked Kshs.5,461
- Total Kshs.231,498

21. These amounts will attract interest at court rates from the date of judgment until payment in full.



22. The Claimants are also entitled to certificates of service plus costs of the case.

23. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY SEPTEMBER 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Werre for the Claimants

Mr. Kamwaro for the Respondent

