



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

**AT KISUMU**

**CAUSE NO. 53 OF 2019**

**ROBERT OKWANY OLALE.....CLAIMANT**

**VERSUS**

**TRANSMARA SUGAR CO LTD.....RESPONDENT**

**JUDGMENT**

1. This Cause was heard on 8 February 2022. Robert Okwany Olale (the Claimant) and the Human Resource Manager with Transmara Sugar Co Ltd (the Respondent) testified.

2. The Claimant filed his submissions on 24 February 2022, and the Respondent on 14 March 2022.

3. The Court has considered the pleadings, evidence, and submissions.

**Unfair termination of employment**

**Procedural fairness**

4. The Respondent issued a show-cause notice to the Claimant around 18 February 2019, and the allegation was the negligent purchase of sugarcane from one Julius Kongere or lack of due diligence in the purchase.

5. The Claimant was requested to respond within 48-hours.

6. On 21 February 2019, the Respondent suspended the Claimant for 14-days allegedly for using inflammatory language against senior management.

7. On the same day, the Respondent issued another show-cause to the Claimant. The allegations were failure to obey lawful instructions from the Regional Operations Manager.

8. On 23 February 2019, the Respondent invited the Claimant to attend a disciplinary hearing on 27 February 2019. He was informed of the right to be accompanied by a colleague and was also supplied with a copy of an investigations report.

9. The hearing took place but was adjourned. On 28 February 2019, the Claimant was informed that the hearing would continue 5 March 2019 (the hearing proceeded).

10. The Respondent extended the Claimant's suspension on 6 March 2019 for 14-days and on 28 March 2019 for another 7-days.

11. The Respondent ultimately wrote to the Claimant on 28 March 2019, informing him of summary dismissal.

12. The Claimant appealed and an appeal hearing scheduled for 17 May 2019 aborted because the Claimant did not attend. The Respondent rescheduled the hearing to 24 May 2019. The hearing did not take place.

13. In terms of sections 35(1) and 41 of the Employment Act, 2007, the Court is satisfied that the Respondent complied with the requirements of procedural fairness.

**Substantive fairness**

14. By dint of sections 43 and 45 of the Employment Act, 2007, the Respondent had the burden of proving the validity and fairness of the reason(s) for dismissing the Claimant.

15. The Court has already adverted to the reason for the dismissal of the Claimant.

16. The Claimant produced documents showing that he purchased sugarcane from a farmer already contracted to the Respondent. Upon harvesting, the sugarcane was transported to the Respondent's factory on or around 2 January 2019.

17. The Respondent's security which had received a tip detained the tractor transporting the sugarcane. The Claimant attempted to intervene and also acknowledged that the Respondent had extended to the seller of the sugarcane inputs which were to be recovered.

18. The Claimant was a Regional Manager with the Respondent. He knew the procedures of contracting sugarcane farmers and recovery of inputs. He entered into a sugarcane purchase agreement without bothering or factoring in how the Respondent was to recover the cost of inputs. He did not disclose to the Respondent the deal he had entered with the farmer.

19. The Court finds that the conduct of the Claimant was dishonest and that the Respondent proved valid and fair reasons for the dismissal.

20. The dishonesty led to the loss of trust and confidence expected in an employment relationship.

21. Compensation, damages for loss of employment and salary in lieu of notice are therefore not remedies available to the Claimant.

#### **Breach of contract**

#### **Unpaid salaries during suspension**

22. The Claimant sought Kshs 120,750/- being withheld salary during the suspension. The Respondent did not disclose the source of the authority to withhold the Claimant's salary during suspension, and the Court finds a breach of contract.

#### **Accrued leave**

23. With respect to accrued leave, the Claimant pleaded Kshs 241,500/-. The Claimant did not disclose how he arrived at the figure.

24. The Respondent had offered the Claimant accrued leave in the dismissal letter.

25. The Respondent paid the Claimant Kshs 53,076/- as commuted leave. Considering it is the employer who is conversant with such computations, the Court finds that the Claimant's outstanding leave was paid together with the terminal dues.

#### **Certificate of Service**

26. The Respondent issued a certificate of service to the Claimant, and nothing turns on this head of the claim.

#### **Conclusion and Orders**

27. From the foregoing, save for an award of Kshs 120,750/- withheld salaries, the Court finds no merit in the Cause, and it is dismissed with no order on costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 27<sup>TH</sup> DAY OF APRIL 2022**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

#### **Appearances**

**For Claimant Mr. Anyumba instructed by Anyumba & Associates Advocates**

**For Respondent Mr. Ouma, Senior Industrial Relations & Legal Officer, instructed by the Federation of Kenya Employers**

**Court Assistant Chrispo Aura**