



**Barasa v Space and Style Company Limited (Cause 1971 of 2016)
[2022] KEELRC 1160 (KLR) (27 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1160 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1971 OF 2016**

J RIKA, J

MAY 27, 2022

BETWEEN

DICON SUNGUTI BARASA CLAIMANT

AND

SPACE AND STYLE COMPANY LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim on 23rd September 2016. He states, he was employed by the Respondent sometime in 2011, as an Office Assistant. He earned a monthly salary of Kshs. 14,893.
2. He states, his contract was unfairly and unlawfully terminated by the Respondent, on 11th March 2016. He was not give reason for termination. He was not heard. He prays for Judgment against the Respondent as follows: -
 - a. 1- month salary in lieu of notice at Kshs. 14,893.
 - b. 12 months' salary in compensation for unfair termination at Kshs. 178,716.
 - c. Arrears of salary for February and March 2016 at Kshs. 29,786.
Total...Kshs. 402,111
 - d. Costs.
 - e. Interest and any other suitable relief.
[The total above should be Kshs. 223,395]
3. The Respondent filed its Statement of Response on 26th November 2016. It is admitted that the Claimant was an Employee of the Respondent. The Respondent suffered monetary loss. The Claimant was implicated and informed about it, on 9th February 2016. The Respondent's policy is that an



Employee engaged in acts of gross misconduct, is dismissed immediately. However, the Claimant was dismissed 2 months later, after he was engaged in an act of gross misconduct. The lost money was deducted from the Claimant's February and March 2016 salary.

4. The Claimant, and the Respondent's Human Resource Manager Joyce Wamuyu, gave evidence for the respective Parties on 23rd November 2021, when the hearing closed. The matter was last mentioned in Court on 22nd February 2022, when the Parties confirmed filing and exchange of their Submissions.
5. The Claimant adopted his Witness Statement and Documents on record. He explained that the money went missing while he had been sent to the supermarket by Respondent's Accountant. He continued working for 2 months after the loss, and the money was deducted from his monthly salary. He was compelled to work in the store as a Loader. He was after this, issued the letter of summary dismissal. There was no notice.
6. Cross-examined, he restated that he joined the Respondent in 2011. He was entrusted Kshs. 20,000 by the Accountant, on 5th February 2016. He could not account for the money. He was given a chance to explain himself. He was not able to account. He did not say what he did with the money. His contract contained a summary dismissal clause. There was no notice in cases of dismissal for gross misconduct. The contract required the Claimant to act with honesty and integrity. He explained that as human being, he could find himself in an unexpected scenario. The Claimant alleged the money was stolen, while he was in the Kitchen. Redirected, he clarified that Kshs. 20,000 was entrusted to him to bank. He was to look for smaller denomination of Kshs. 10,000 for change. He did not bank Kshs. 20,000. It was stolen.
7. Wamuyu also adopted her Witness Statement. She explained that the Claimant was entrusted money by the Respondent to bank. He did not bank. He could not account for it. He was taken through a disciplinary process. Cross-examined, Wamuyu was not sure if a letter to show cause issued, or whether the Claimant appeared before a disciplinary forum, accompanied by a colleague of his choice, or a trade union representative. She was not sure if the Claimant was paid his salary for February and March 2016, or whether the Respondent recovered its money from the Claimant.
8. The issues are whether the Claimant's contract was terminated by the Respondent fairly, in accordance with Sections 41, 43 and 45 of the *Employment Act*; and whether he is entitled to the remedies sought.

The Court Finds: -

9. It is not disputed that the Claimant was employed by the Respondent as an Office Assistant, between December 2011 and 11th March 2016.
10. He conceded in his evidence, that he was entrusted Kshs. 20,000 by the Respondent to bank. It is common ground that the money was not banked, and that the Claimant could not adequately account for it. He told the Court on cross examination: -On 5th February 2016, I was given Kshs. 20,000 by the Accountant. I could not account for it. I was given a chance to explain what I did with the money. I could not explain what I did with the money.
11. It is obvious from the above statements made by the Claimant on oath, before the Court, that the Respondent had valid reason in terminating the Claimant's contract. He failed to account for money entrusted to him to bank. Sections 43 and 45 of the *Employment Act* were adhered to by the Respondent.
12. He also concedes that he was granted an opportunity to explain what he did with the money. The Court does not think it was necessary for the Respondent to go beyond granting the Claimant



the opportunity to explain himself. It was not necessary to convene a formal disciplinary hearing, preceded by letter to show cause, and charges. The Claimant was aware of the allegations against him. He admitted he was entrusted the money and could not account for the money. He conceded gross misconduct. He was dismissed on the strength of these concessions. Sections 41 and 45 of the [Employment Act](#) were observed.

13. The Claimant was retained for 2 months after stealing, during which the Respondent recovered its money from the Claimant's salary. The Respondent was entitled to recover its money from the Claimant under Section 19 [1] [d] of the [Employment Act](#).
14. Recovery however, did not absolve the Claimant from the act of gross misconduct, warranting summary dismissal. The Respondent acted fairly and lawfully.

It is Ordered:-

- a. The Claim is declined.
- b. Costs to the Respondent.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 27TH DAY OF MAY 2022.

JAMES RIKA

JUDGE

