



**Bonuke v Brookside Dairy Company (Cause 8 of 2018)
[2022] KEELRC 3959 (KLR) (21 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 3959 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 8 OF 2018
S RADIDO, J
SEPTEMBER 21, 2022**

BETWEEN

AMOS MARANGA BONUKE CLAIMANT

AND

BROOKSIDE DAIRY COMPANY RESPONDENT

JUDGMENT

1. Amos Maranga Bonuke (the Claimant) sued Brookside Dairy Co Ltd (the Respondent), alleging unfair termination of employment.
2. The Respondent filed a Response on 12 February 2018, and the Cause was heard on 15 March 2022, when the Claimant testified and on 17 May 2022, the Respondent's General Manager, Human Resources testified.
3. The Claimant filed his submissions on 30 June 2022, and the Respondent on 19 July 2022.
4. The Court has considered the pleadings, evidence, and submissions.

Unfair termination of employment

Procedural fairness

5. The Claimant challenged the procedural fairness of the termination of his employment on or around 26 August 2016 on the ground that he was not afforded an opportunity to be heard and that it was devoid of valid reasons.
6. The Respondent's witness, however, countered that due process was followed before the termination of the Claimant's contract.
7. According to the witness, the Claimant was issued with a notice to show cause dated 22 August 2016, and he responded on 23 August 2016. The show cause outlined the allegation against the Claimant.



8. The Respondent after that invited the Claimant to attend an oral hearing which he did on 27 August 2016, and the hearing was followed by summary dismissal.
9. The Claimant was notified of the allegations to confront, and he was allowed to make representations, both written and oral.
10. The Court is satisfied that the termination of the Claimant's employment met the statutory procedural fairness threshold.

Substantive fairness

11. Sections 43 and 45 of the *Employment Act*, 2007, require the employer to prove that the reasons that precipitated the termination of an employment contract were valid and fair.
12. The reason for the summary dismissal of the Claimant was an attempt to defraud (involvement in excess loading of 56 cartons of dairy milk product).
13. The Claimant admitted during the disciplinary process that a colleague called Wallace Odhiambo and himself loaded a truck with milk on a Sunday; it was sealed and that on Monday, the truck was found to have an excess of 56 cartons of milk. The Claimant asked for forgiveness in his written response.
14. In Court, the Claimant admitted that 56 excess cartons of milk were found in the truck he had participated in loading and that he was aware that the loading should have conformed with a loading order.
15. The Claimant, however, contended that he made an admission during the disciplinary process to save his job.
16. It is not in dispute that the Claimant was aware of the loading protocol. The Claimant and a colleague disregarded the protocol and loaded excess milk cartons. The act was one of dishonesty which would have led to the loss of revenue by the Respondent.
17. The Court is satisfied that the Respondent proved valid and fair reasons to dismiss the Claimant.

Compensation and Pay in lieu of notice

18. With the above conclusions, compensation and pay in lieu of notice are not available remedies to the Claimant.

Conclusion and Orders

19. The Cause is dismissed with costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 21ST DAY OF SEPTEMBER 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Mr Nyanga instructed by Nyanga & Co. Advocates

For Respondent. Mr Njuguna instructed by Wainain

Ireri Advocates LLP



Court Assistant Chrispo Aura

