



REPUBLIC OF KENYA



KENYA LAW
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**Motari v Kisii Bottlers Limited (Cause 341 of 2015)
[2022] KEELRC 13318 (KLR) (30 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13318 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 341 OF 2015
S RADIDO, J
NOVEMBER 30, 2022**

BETWEEN

HARON MOTARI CLAIMANT

AND

KISII BOTTLERS LIMITED RESPONDENT

JUDGMENT

1. The questions the court is called upon to adjudicate are:
 - i. Whether the summary dismissal of the claimant was unfair?
 - ii. Appropriate remedies/orders?
2. The cause was heard on 4 March 2019, 7 February 2022, and 4 October 2022.
3. Haron Motari (the claimant) and a Human Resource Manager with Kisii Bottlers Ltd (the respondent) testified.
4. The claimant filed his submissions on 18 October 2022 and the respondent on 21 November 2022 (should have been filed by 1 November 2022).
5. The court has given due consideration to the pleadings, evidence, and submissions.

Unfair Termination Of Employment

Procedural Fairness

6. The respondent issued to the claimant a show-cause notice dated 2 April 2015. The allegation was a failure to enforce the respondent's credit policy, and the particulars were also included.
7. The claimant was requested to make a written response and he responded on 5 April 2015.



8. The respondent thereafter invited the claimant to attend an oral hearing on 7 April 2015. The claimant attended the hearing.
9. The hearing was followed with a summary dismissal on 15 May 2015.
10. Sections 35(1) and 41 of the *Employment Act, 2007* outline the steps an employer should take before terminating an employment contract.
11. Since the respondent informed the claimant of the allegations to confront and afforded him both a written and oral opportunity to defend himself, the court is satisfied that the respondent complied with the statutory elements of procedural fairness.

Substantive Fairness

12. Sections 43 and 45 of the *Employment Act* demands that when there is a challenge to a termination of employment, the employer proves the validity and fairness of the reasons leading to the termination decision.
13. The reason leading to the summary dismissal of the claimant was the failure to enforce the credit policy. The particulars were that the claimant had received 3 cheques which were declined on account of insufficient funds and continued to receive more cheques from the customer before replacement of the declined cheques.
14. The claimant was also charged with accepting personal cheques in replacement of other dishonoured cheques from another customer. The details of the cheques were given.
15. To discharge the burden that the reason warranted dismissal, the respondent called its Human Resources Manager.
16. The witness produced records including the Finance, Procurement, ICT and Risk Management Policy, claimant's induction report, performance appraisal guidelines, minutes of the disciplinary hearing and the claimant's response to the show-cause.
17. In the response to the show-cause, the claimant admitted that he took a risk to accept personal cheques from a customer to clear the debts due from that particular customer. The claimant's action was contrary to the Finance, Procurement, ICT and Risk Management Policy.
18. The minutes of the disciplinary hearing indicate that the claimant explained the lapse on the failure to enforce the credit policy on the ground that his office was a busy one and, therefore, he did not have the time to consult the Head of Department to accept the cheques.
19. The claimant also asserted that he did not have access to the respondent's bank accounts and so could not establish whether the cheques had bounced.
20. The minutes further show that the claimant had been provided with access rights to the respondent's bankers in 2013 to monitor the status of payments made by customers.
21. The evidence presented by the respondent establishes that the claimant had the ability and obligation to monitor payments made by customers in real time or so soon thereafter, including when cheques bounced.
22. The claimant was in the circumstances in dereliction of duty when he failed to detect the bounced cheques and in accepting further cheques from the customer.



23. In accepting personal cheques without consultation, the claimant was acting contrary to the credit policy in place.
24. Although the claimant disowned the Finance, Procurement, ICT and Risk Management Policy allegedly because it was bearing the title Almasi Bottlers Ltd, the Court finds the attempt at disownment without merit considering the respondent's unchallenged testimony that Rift Valley Bottlers Ltd, Kisii Bottlers Ltd and Mt Kenya Bottlers Ltd were undergoing a merger/acquisition at the particular period and were therefore using documents developed by Almasi Bottlers Ltd.
25. The court also notes that the claimant referred to the credit policy at page 3 of his induction report.
26. The court is satisfied that the respondent proved valid and fair reasons to dismiss the claimant.

Conclusion and Orders

27. The court finds no merit in the cause. It is dismissed with no order on costs since the respondent filed its submissions way out of time.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 30TH DAY OF NOVEMBER, 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For claimant Mose, Mose & Mose Advocates

For respondent Nyamurongi & Co Advocates

Court Assistant Chrispo Aura

