



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyamai v Harley's Limited (Cause 5 of 2017)**  
**[2022] KEELRC 13274 (KLR) (24 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13274 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE 5 OF 2017**  
**L NDOLO, J**  
**NOVEMBER 24, 2022**

**BETWEEN**

**JOHN NYAMAI ..... CLAIMANT**

**AND**

**HARLEY'S LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The dispute before the Court arises from the termination of the Claimant's employment. The Claimant states his case in a Memorandum of Claim dated 5<sup>th</sup> January 2017 and filed in court on even date. The Respondent filed a Memorandum of Reply on 27<sup>th</sup> February 2017.
2. At the trial, the Claimant testified on his own behalf and the Respondent called its Chief Administrator, Jyoti Chana. At the time of writing this judgment, only the Claimant had filed final submissions.

**The Claimant's Case**

3. The Claimant states that he was employed by the Respondent in 2012 in the position of Warehouse Manager, earning a monthly salary of Kshs. 23,000.
4. He further states that on 4<sup>th</sup> May 2016, his colleague by the name Kigen, received a picking list of a customer's order for a product known as Emcon. Kigen is said to have mixed up the order, removing an identical product known as Letrol, which he passed on to the Claimant and which was forwarded to a manager of internal dispatch known as Alex, who was in charge of dispatch and final checking of the product.
5. The Claimant avers that Alex forwarded the product to the customer who in turn rejected it.



6. Following this incident, the Respondent terminated the Claimant's employment.
7. The Claimant accuses the Respondent of discriminating against him,, by terminating his employment without proper investigation as to who was liable for dispatching the wrong product.
8. The Claimant avers that in terminating his employment, the Respondent breached mandatory provisions of the law. He points out that he was not allowed an opportunity to be heard. He therefore claims the following:
  - a. 12 months' salary in compensation.....Kshs. 276,000
  - b. Damages for discrimination.....1,500,000
  - c. Certificate of service
  - d. Costs plus interest

### **The Respondent's Case**

9. In its Memorandum of Reply dated 30<sup>th</sup> January 2017 and filed in court on 27<sup>th</sup> February 2017, the Respondent admits having employed the Claimant but denies that the termination of his employment was unlawful or unfair.
10. The Respondent states that on 4<sup>th</sup> May 2016, it discovered that the Claimant had handled his responsibilities recklessly and negligently and that in the process, a customer was supplied with the wrong product. In particular, the Claimant is accused of releasing medicine known as Letrol instead of Emcon to a loyal customer who informed the Respondent.
11. The Respondent avers that this negligence on the part of the Claimant put the Respondent in significant jeopardy and exposed it to claims for supply of wrong medicine which may have led to serious harm to the public.
12. Additionally, the Respondent accuses the Claimant of being part of a syndicate that actively defrauded the Respondent by failing to ensure that all products and goods under his care were accounted for and not misappropriated.
13. The Respondent further avers that on being asked to attend a meeting with the Respondent's senior management, the Claimant became excessively aggressive. The Respondent adds that the aggression by the Claimant did not permit any useful meeting with management. The Respondent's Head of Human Resource, Ms. Jyoti Chana is said to have informed the Claimant to take time to compose himself before proceeding with the meeting, an offer the Claimant declined.

### **Determination**

14. From the parties' pleadings and testimony before the Court, the first issue that arises for determination is whether the Claimant's claim is competent.
15. The Claimant was categorical that the signature on the verifying affidavit accompanying the Memorandum of Claim was not his. For some reason that was not clear to the Court, Counsel for the Claimant chose not to submit on this issue.



16. The purpose of a verifying affidavit was explained by Maraga J (as he then was) in *Korica (U) Limited & another v Kenya Ports Authority* [2008] eKLR in the following terms:

“The objective of verifying affidavits is to avoid suits being filed without the authority of the Plaintiffs themselves.”

17. Rule 4(2) of the Employment and Labour Relations Court (Procedure) Rules requires that every Statement of Claim be accompanied by an affidavit verifying the facts relied upon.

18. A verifying affidavit is meant to vouch for what is pleaded in the Statement of Claim. It follows therefore that where the Claimant disowns the verifying affidavit, he disowns the claim as well. This is what happened in this case and there is no claim before the Court.

19. Consequently, the only order I will make is to strike out the Claimant’s entire claim, which I hereby do.

20. Each party will bear their own costs.

21. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 24<sup>TH</sup> DAY OF NOVEMBER, 2022.**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Ms. Wairimu h/b Ms. Muhanda for the Claimant

Mr. Gakunga for the Respondent

