



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 231 OF 2015**

**CHARLES OYIEKO OKUMU.....CLAIMANT**

**VERSUS**

**UNITED MILLERS LIMITED.....RESPONDENT**

**JUDGMENT**

1. On 3 September 2013, United Millers Ltd (the Respondent) issued a show-cause notice to Charles Oyieko Okumu (the Claimant), and the grounds for the notice were negligence and carelessness at work.
2. The notice called upon the Claimant to respond within 48 hours.
3. On 7 September 2013, the Respondent invited the Claimant to attend a disciplinary hearing. The Claimant attended the hearing, and the Committee recommended summary dismissal.
4. Consequently, the Respondent's Human Resources Manager notified the Claimant of the termination of his employment on 9 September 2013. The Claimant unsuccessfully appealed.
5. On 2 July 2015, the Claimant sued the Respondent, alleging unlawful termination of employment and breach of contract.
6. The Respondent filed a Response on 29 January 2016, and the Cause was heard on 15 June 2017 when the Claimant testified and 17 February 2021 when the Respondent's Human Resources Manager testified.
7. Pursuant to Court orders, the Claimant filed his submissions on 24 March 2021, while the Respondent filed its submissions on 14 April 2021.
8. The Court has considered the pleadings, evidence and submissions.

**Unfair termination of employment**

**Procedural fairness**

9. One of the grounds advanced by the Claimant to challenge the termination of his contract was that he was not afforded an opportunity to be heard. Another ground raised by the Claimant was that the allegation in the show-cause was different from the one given in the termination letter.
10. The Claimant was issued with a show-cause notice, and the grounds given in the notice were negligence and carelessness at work. The particulars were receipt of wheat which did not meet the set quality parameters (sample presented to the laboratory differed with the delivered batch).
11. The Claimant was requested to make a written response, after which he was invited to an oral hearing which he attended.
12. The minutes of the hearing shows that the Claimant made representations.
13. The Court is satisfied that the Claimant was afforded two opportunities to defend himself.
14. On the allegation on the difference between the allegations in the charge and the reason leading to termination of employment, both the show-cause and the termination letter make reference to the ground of negligence and the particulars cite delivery of wheat which did not

meet set quality parameters.

15. It is apparent to the Court that the Claimant confused grounds and reasons for the termination. The grounds are normally broad categories such as *misconduct*, *performance* or *capacity*, while the reasons form the particulars.

16. The Court finds that the Respondent met the test expected of employers by sections 35(1) and 41 of the Employment Act, 2007.

#### **Substantive fairness**

17. Apart from affording the employee an opportunity to make representations, sections 43 and 45 of the Employment Act, 2007 require the employer to not only prove but prove as valid and fair the reasons for termination of employment.

18. The Claimant challenged the validity and fairness of the reasons leading to the termination of his employment on the grounds that his work was sampling in the mini-laboratory and that on the material day, he did the sampling of the moisture content, test weight, infestations and physical appearance and then he passed the same to the main laboratory which had better machines for more detailed testing after which he left for lunch without informing his supervisors or handing over.

19. The Claimant stated that the wheat he was accused of accepting was tested in the main laboratory.

20. The Respondent's witness testified that on 31 August 2013, the Claimant received a consignment of wheat, but before the offloading was finished, he left for lunch without informing the other supervisors or handing over, thus leading to the inferior quality wheat finding its way to the silos.

21. The witness testified that the wheat did not meet set quality parameters (sample sent to laboratory differed with the offloaded batch sent to the silos from a truck KAY 694Q. According to the witness, the Claimant was conversant with standard quality parameters.

22. The witness produced a copy of the Silos Operation Procedures.

23. The procedures confirm the role of the Claimant during the first analysis. The procedures required the Claimant to collect samples for purposes of testing for moisture and weight and, if found up to standard, to send the samples to the main laboratory for complete analysis.

24. The Claimant left for lunch before the completion of the offloading. He did not inform any of his superiors or designate a colleague to stand in for him.

25. As a result, contaminated wheat found its way to the silo, causing loss of nearly Kshs 900,000/-.

26. Under these circumstances, a reasonable employer would have taken disciplinary action, and the Court cannot fault the Respondent.

27. The Court finds that the Respondent established valid and fair reasons to terminate the Claimant's employment.

28. Damages for loss of employment, compensation and pay in lieu of notice are thus not available to the Claimant as remedies.

#### **Breach of contract**

#### **Untaken leave**

29. The Claimant was paid outstanding leave, and nothing turns on this head of the claim.

#### **Conclusion and Orders**

30. From the foregoing, the Court finds no merit in the Cause, and it is dismissed with costs.

**Delivered through Microsoft teams, dated and signed in Kisumu on this 26<sup>th</sup> day of May 2021.**

**Radido Stephen, MCI Arb**

#### **Judge**

#### **Appearances**

For Claimant Mr Ouma M C instructed by Odhiambo Ouma & Co. Advocates

For Respondent Dickens Ouma, Advocate, Federation of Kenya Employers

Court Assistant Chrispo Aura