



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NO 6(B) OF 2019**

**SHARIFFU MIKE OMONDI.....CLAIMANT**

**VS**

**RANFER TEAS (KENYA) LIMITED.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. For those who enjoy their cup of tea, one that is perfectly brewed is not just an inviting pastime, but a necessity. For the tea savourer, the interest is with the finished product, but the tea that ends up in the cup comes from a meticulous process known as tea blending. The process of achieving a perfect blend begins with the right purchase of quality tea, followed by the right mix of different teas. This is the mainstay of Ranfer Teas (Kenya) Limited, the Respondent in this case.
2. The Claimant, Shariffu Mike Omondi was an employee of the Respondent engaged in the position of Tea Manager, at the time material to this case. The termination of his employment, which is the subject of this dispute, arose from a tea shipment to a premier customer based in Egypt, known as El Arosa Tea.
3. The transaction went wrong and El Arosa rejected the tea, terming it as so bad that they could not take it for free. El Arosa demanded the purchase price back and blacklisted the Respondent. So what went wrong? The Claimant was blamed for negligence in handling the order and the Claimant blamed his boss for mishandling the shipment. The question before the Court is whether the Claimant was in fact culpable of the ills he was accused of or was it a case of a storm in a tea cup?
4. The Claimant came to court by way of a Memorandum of Claim dated 31<sup>st</sup> January 2019 and filed in court on 14<sup>th</sup> February 2019. The Respondent filed a Statement of Response on 18<sup>th</sup> March 2019.
5. The matter went to full trial where the Claimant testified on his own behalf and the Respondent called its Chief Executive Officer, Chandika Brodie. The parties also filed written submissions.

**The Claimant's Case**

6. The Claimant states that he was employed by the Respondent on 18<sup>th</sup> August 2001, at an entry level salary of Kshs. 8,000. He rose through the ranks to the position of Tea Manager, earning a monthly salary of Kshs. 103,504.
7. The Claimant states that on 9<sup>th</sup> April 2018, the Respondent's Trading Manager, Chandu approved shipment of STD 1522 to the Respondent's client, El Arosa Tea. The Claimant claims that Chandu was aware that the Respondent no longer dealt with that STD because El Arosa Tea had dropped it, opting for the higher quality and more expensive STD 1522B.
8. The Claimant further claims that the shipment of STD 1522 to El Arosa Tea was done without prior approval of samples by El Arosa Tea as agreed between the Respondent and El Arosa.
9. The Claimant states that as the Tea Manager, he raised an objection with regard to the quality of tea that was being packaged and/or blended for onward shipment to El Arosa but his concerns were ignored by Chandu, the Trading Manager.
10. The Claimant avers that Chandu was in charge of the Respondent's tea export and his decisions were final and binding.

11. The Claimant further avers that throughout the shipment process, he was not involved either directly or indirectly, with El Arosa and/or its agent, Mahes.

12. As it turned out, concerns on the quality of the shipped tea were raised by El Arosa and/or its agent, Mahes upon delivery and tasting in Egypt, which they termed as inferior.

13. El Arosa therefore declined the shipped STD 1522 as it would damage its brand and credibility, and demanded STD 1522B, which was then agreed upon and approved for shipment. As a result, the Respondent incurred a loss of USD 76,032 and also lost El Arosa as a client.

14. On 4<sup>th</sup> December 2018, the Claimant was summoned by the Respondent's Director, Kiarie Kariuki, to discuss performance of his duties.

15. On 5<sup>th</sup> December 2018, the Claimant was issued with a show cause letter, which also summoned him to appear before a panel to show cause why his employment should not be terminated on account negligence in the performance of his duties.

16. On 11<sup>th</sup> December 2018, the Claimant attended a disciplinary meeting and on 13<sup>th</sup> December 2018, he was issued with a termination letter on account of negligence in the performance of his duties.

17. The Claimant's case is that the termination of his employment was based on racial discrimination, malice, innuendos, falsehoods and/or propaganda, calculated to use him as a scapegoat to cover for the grave mistakes committed by the Respondent's Trading Manager, Mr. Chandu.

18. It is the Claimant's further case that the termination was unfair because the Respondent failed and/or refused to take his representations into account.

19. The Claimant now seeks the following remedies:

a) Loss of future earnings.....Kshs. 21,913,020.00

b) Leave pay for 16 years.....1,363,476.80

c) 12 months' salary in compensation.....1,460,868.00

d) Certificate of service

e) Costs plus interest

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

20. In its Statement of Response dated and filed in court on 18<sup>th</sup> March 2019, the Respondent admits having employed the Claimant on 18<sup>th</sup> August 2001.

21. The Respondent states that at the time of the Claimant's exit from its employment, he held the position of Tea Manager and was earning a monthly salary of Kshs. 140,000.

22. The Respondent further states that as Tea Manager, the Claimant's responsibilities included; managing the Tea Division, tea purchasing, grading, blending, liquoring, sampling, pre-shipment processes, shipment and sales.

23. The Respondent contends that it had assigned its premier customer, El Arosa to the Claimant.

24. The Respondent accuses the Claimant of negligently performing his responsibilities, resulting in El Arosa receiving tea of inferior quality. In this regard, the Respondent cites the following particulars of negligence/default in performance by the Claimant:

a) Directly or under his instructions or supervision, purchasing, grading, blending, testing and shipping wrong quality tea for delivery to the subject customer;

b) Knowingly, wilfully, negligently, recklessly and carelessly shipping to the subject customer, tea that did not meet pre-advised qualities;

c) Failing to warn, caution, object or stop the shipment of wrong quality tea to the subject customer, while being aware of the dire consequences of such an action;

d) Failing to inform, communicate or advise his supervisors that the wrong quality tea was being shipped to the subject customer;

e) Abdicating, failing, neglecting or ignoring to undertake his duties which were technical in nature, with regard to the wrong quality of tea that was supplied to the subject customer;

- f) Failing to send advance samples of the tea that was to be supplied to the subject customer;
- g) Failing, refusing or neglecting to cooperate with other employees;
- h) Repeatedly failing, ignoring or omitting to meet the quality of tea ordered by the subject customer;
- i) Failing, refusing or omitting to discharge his duties and responsibilities or doing so negligently, carelessly, recklessly and without due care and attention.

25. The Respondent states that as a result of the Claimant's failure to perform his duties with due care, the Respondent was surcharged and lost revenue in the sum of USD 76,032.

26. Following the incident, the Respondent commenced disciplinary proceedings against the Claimant.

27. The Respondent's case is that the termination of the Claimant's employment was for valid reasons and was conducted fairly and lawfully.

28. In this regard, the Respondent states that it followed due process as follows:

- a) A notice to show cause was issued to the Claimant on 5<sup>th</sup> December 2018;
- b) An invitation to attend disciplinary proceedings accompanied by a colleague was sent to the Claimant;
- c) A disciplinary hearing was held on 11<sup>th</sup> December 2018 where the Claimant was given an opportunity to respond to the charges against him;
- d) A decision to terminate was communicated by letter dated 13<sup>th</sup> December 2018;
- e) The Claimant was paid his terminal dues.

29. The Respondent states that the Claimant was paid all his terminal dues totalling Kshs. 1,021,437 made up as follows:

- a) Salary for days worked (1/12/2018-15/12/2018).....Kshs. 70,000
- b) Accrued annual leave days (11 days for 2018).....51,333
- c) One month's salary in lieu of notice.....140,000
- d) Gratuity payment for 17 years worked.....1,190,000
- e) Less statutory deductions.....(429,896)

30. In specific response to the claim for leave pay, the Respondent states that in 2016, it paid all its employees for leave days accrued and not taken, as part of its process of regularising the leave management system. In this exercise, the Claimant is said to have been paid and acknowledged receipt of the following payments made in two tranches:

- a) 35% 2001-2016 accumulated leave payment less tax  
paid on 20<sup>th</sup> December 2016.....Kshs. 113,543.00
- b) 65% 2001-2016 accumulated leave payment less tax  
paid on 16<sup>th</sup> February 2016.....210,866.00
- Total 2001-2016 accumulated leave payment less tax.....324,408.58

31. The Respondent contends that the Claimant took his 21 days' annual leave in the year 2017/2018.

32. The Respondent further contends that upon termination, the Claimant was paid Kshs. 51,333 in lieu of his 11 accrued leave days for the year 2018/2019.

33. The Respondent raises the issue of limitation on the claim for leave pay by virtue of Section 90 of the Employment Act.

34. The Respondent denies the allegations made by the Claimant against Chandu and states that as the Respondent's Head of Operations in Kenya, Chandu relied on the Claimant to carry out his responsibilities and give him accurate information to relay to customers on behalf of

the Respondent.

35. The Respondent states that Chandu was appointed to communicate directly with the subject customer, in response to complaints received from the customer, regarding the Claimant's mishandling of their order, including the quality of tea.

36. The Respondent goes on to state that Chandu took over as the Head of Operations in April 2018, after the subject tea had already been purchased by the Claimant.

37. The Respondent adds that Chandu did not take over the Claimant's job or responsibilities, which the Claimant was required to perform.

38. The Respondent terms the Claimant's abdication of responsibility as a deliberate act of sabotage against Chandu who was his supervisor, and against the Respondent.

39. The Respondent denies the allegations of racism, discrimination, malice, innuendo or falsehoods made by the Claimant, which it terms as unfounded and without any basis.

### **Findings and Determination**

40. There are two (2) issues for determination in this case:

- a) Whether the termination of the Claimant's employment was lawful and fair;
- b) Whether the Claimant is entitled to the remedies sought.

### **The Termination**

41. On 13<sup>th</sup> December 2018, the Respondent wrote to the Claimant as follows:

*"Dear Sir,*

#### **RE: TERMINATION OF YOUR EMPLOYMENT**

*We refer to the meeting held at the company's office on 11<sup>th</sup> December 2018 when you appeared for purposes of showing cause why your services should not be terminated as per the letter dated 5<sup>th</sup> December 2018.*

*Please note that the company was not satisfied with your explanation as to the loss of US\$ 76,032.00 leading to the client El Arosa deciding not to trade with the company and hence resulting in a substantial loss of business of the company.*

*The company has therefore terminated your employment with the company as a Tea Manager effective from **13<sup>th</sup> December 2018**. You will be paid your salary for the days worked upto and including 13<sup>th</sup> December 2018 together with one (1) month salary in lieu of notice. You will also be entitled to payment of your terminal dues for the period you have worked with the company since **18<sup>th</sup> August 2001**.*

*Please call into the office on **17<sup>th</sup> December 2018** to confirm the dues as calculated by the Accountant and to collect your cheque in respect of the same.*

*We thank you for the service rendered for this company over the years and wish you all the best in your endeavours.*

*Yours sincerely,*

*(signed)*

**KIARIE KARIUKI**

**MANAGING DIRECTOR"**

42. Prior to the termination letter, the Claimant had been issued with a show cause letter dated 5<sup>th</sup> December 2018, which also served as notice of a disciplinary hearing on 11<sup>th</sup> December 2018.

43. It is not in dispute that delivery of order number 81 of 2018, placed by the Respondent's customer El Arosa, was not satisfactory. In fact, the customer rejected the entire consignment of tea and asked for refund of the purchase price in the sum of USD 76,032. In addition, the Respondent lost future business from El Arosa. What is in dispute is who was to blame for this significant loss.

44. The Respondent blames the Claimant and the Claimant blames Chandika Brodie (also known as Chandu). In particular, the Claimant

faults Chandu for failure to send a pre-shipment sample of the tea to El Arosa as agreed at the signing of the contract. According to the Claimant, had the sample been sent, the loss would not have occurred. Chandu admits that the pre-shipment sample was not sent and assigns time constraints for this lapse.

45. It would however appear that the Claimant was aware that there was something wrong with the quality of the tea, even before it was shipped to Egypt. The Claimant himself testified as much before the Court and when asked what action he took upon realising that the tea that was about to be shipped to El Arosa was not of the required quality, he stated that he raised the issue verbally with Chandu and his own Assistant, but his concerns were ignored. The Claimant did not escalate these concerns.

46. It is not in doubt that as Tea Manager, the Claimant held a senior position in the Respondent's establishment. His job description was not availed to the Court but in his own testimony the Claimant stated that his duties included tea testing, dry leaf blending and buying tea at auctions. With regard to the El Arosa order, the Claimant testified that he played the roles of grading, testing and buying of the tea. He was however not responsible for shipping.

47. The Claimant told the Court that he was aware of the sensitivity of the order by El Arosa. The question to ask therefore is this; if it is indeed true that the Claimant's concerns regarding this important order were ignored, why did the Claimant fail to escalate the matter any further. In my view, the Claimant ought to have escalated his concerns beyond Chandu, with whom he evidently had a frosty working relationship. He failed to do so, leading his employer to incur a huge financial loss in addition to exposure to reputational risk.

48. Section 43 of the Employment Act provides as follows:

***43.(1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.***

***(2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.***

49. In making an inquiry as to whether an employer has discharged the burden of proving a reason for termination of employment, the Court does not seek to supplant the employer's decision with its own. What the Court is required to do is to interrogate whether in the circumstances of the case, the employer acted reasonably. This is what is commonly referred to as the 'reasonable responses test'.

50. This position was affirmed by the Court of Appeal in ***CFC Stanbic Bank Limited v Danson Mwashako Mwakuwona [2015] eKLR*** and ***Kenya Revenue Authority v Reuvel Waithaka Gitahi & 2 others [2019] eKLR*** where it was held that it is not for the Court to substitute its own 'reasonable grounds' for those of the employer.

51. In the present case, what emerges is an employee who stood by and watched his employer plunge into a ditch. Such an employee cannot come to this Court and claim unfair termination of employment. I must also state that the fact that the Claimant's supervisor may also have been negligent, does not diminish the Claimant's culpability. The Claimant occupied a position of responsibility in his own right and he owed his employer a direct duty of care.

52. In the circumstances of this case, the only conclusion to make is that the Claimant worked himself out of his job and the Respondent had a valid reason to terminate the employment contract.

53. Having dispensed with the issue of validity of reason for termination, I will now examine the procedure adopted by the Respondent in ending the employment relationship. It is on record that the Claimant was issued with a show cause letter dated 5<sup>th</sup> December 2018, which also served as notice of a disciplinary hearing on 11<sup>th</sup> December 2018. It is also on record, that the Claimant attended and fully participated at the disciplinary hearing.

54. In light of this and barring any formal objection by the Claimant regarding any stage of the disciplinary process, it seems to me that the procedural fairness requirements of Section 41 of the Employment Act, were fully met.

55. I consequently find and hold that the termination of the Claimant's employment was lawful and fair. The claim for compensation is therefore without basis and is disallowed.

56. As the other claims were abandoned at the trial, the end result is that the Claimant's entire claim fails and is dismissed.

57. Each party will bear their own costs.

58. Orders accordingly.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 13<sup>TH</sup> DAY OF MAY 2021**

**LINNET NDOLO**

**JUDGE**

**ORDER**

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Tolo for the Claimant

Mrs. Katisya for the Respondent