



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 232 OF 2015**

**ELI SITATI WASIKE.....CLAIMANT**

**VERSUS**

**NGEWA LIMITED T/A SUMMER DALE INN.....RESPONDENT**

**JUDGMENT**

1. The suit was filed on 24<sup>th</sup> February 2015 by the claimant praying for maximum compensation for unlawful dismissal and payment of terminal benefits including one month salary in lieu of notice and unpaid salary for December 2014.

2. The claimant testified that he was employed on 22<sup>nd</sup> December 2013 by the respondent as maintenance supervisor and was given appointment letter of the said date. The claimant was summarily dismissed by a letter dated 13<sup>th</sup> January 2015 on grounds of insubordination and failure to account for company TV set that was in his custody. The respondent promised to process his dues and recover Kshs. 30,000 being the cost of the TV.

3. The claimant testified that he was not paid salary for December 2014, and he wrote a demand letter to be paid the salary. The claimant stated that he was immediately suspended upon serving the demand letter on the respondent and was by the letter dated 23<sup>rd</sup> January 2015 summarily dismissed without notice to show cause, or any disciplinary hearing. CW1 denied having stolen a television set. The claimant also denied that he had insubordinated his supervisor. The claimant insisted that the suspension was verbal and without explanation. CW1 admitted he had only one warning letter regarding the issue of water disconnection. Claimant stated that he had no idea how the TV set got lost from the company store.

4. The claimant prays to be awarded as prayed.

5. RW1 Peter Muniu Kamau testified that he was the Security Manager for the respondent. RW1 testified that an audit report was conducted at the end of 2014 and it was discovered that a TV set was missing in the maintenance office which was also company store. That three (3) people worked in the maintenance office but the claimant was the most senior employee at the store. RW1 testified that a report was received that the claimant removed the TV and stated that he was taking it to the Chairman's office. The three employees recorded statements and the claimant was suspended. The matter was reported to Langata Police Station. RW1 testified that the three employees held a meeting at the General Manager's office. RW1 and Human Resource Manager participated in the meeting. RW1 said the claimant denied having taken the TV set. RW1 stated that the panel found the claimant guilty and made a decision to summarily dismiss him. That the claimant agreed to pay the 32 inch TV set through his salary. That RW1 agreed to write an admission letter to the General Manager. The claimant did not write the letter and he did not return after the suspension.

6. RW2, Jackline Adhiambo testified that she was a colleague of the claimant. That the claimant took the TV from the store. That the TV set was in the store on a Saturday and on Monday when they came back the same was missing. RW2 testified that she asked the claimant where the TV set was and the claimant told him that the Director Mr. Fredrick Muchoki had requested for the TV. RW2 stated that the stock take was taken after that incident.

**Determination**

7. The issues for determination are:

- (i) Whether the dismissal of the claimant was for a valid reason and followed a fair procedure.
- (ii) Whether the claimant is entitled to the reliefs sought.

8. A careful analysis of the evidence before court has led the court to the inevitable conclusion that the claimant was reasonably implicated in the loss of a TV set from the store where he was in charge, being the most senior officer in charge of maintenance store. The claimant was given opportunity to explain the whereabouts of the TV set and his explanation was not satisfactory to the General Manager, the Human Resource Manager and RW1, the Security Manager.

9. The claimant had been initially suspended following the discovery of the missing TV and was handed a letter of summary dismissal for the loss of TV and insubordination. Although there was no sufficient evidence regarding the offence of insubordination, the respondent established that it had a valid reason to dismiss the claimant for failure to explain the loss of a TV set lawfully in his custody.

10. Accordingly, the claimant has failed to prove that the termination was wrongful. To the contrary the respondent was able to justify the termination. However, considering the circumstances under which the TV set got lost, it is inappropriate to direct the claimant to repay the TV set without taking the matter to court. Furthermore, this is an appropriate case for the summary dismissal to be commuted to a normal termination because there is no direct evidence of theft of the TV set against the claimant though he was accountable for its loss and the respondent directed to pay one month salary in lieu of notice to the claimant. The respondent is also bound to pay the claimant salary for the month of December 2014.

11. Accordingly, the summary dismissal of the claimant is commuted to a normal termination and judgment entered in favour of the claimant against the respondent as follows:

(a) Payment of Kshs. 76,218 being unpaid salary for the month of December 2014.

(b) One month salary in lieu of notice in the sum of Kshs. 76,218.

Total Kshs. 152,436.

(c) Interest at court rates from date of filing suit till payment in full.

(d) Costs of the suit.

**Dated, Signed and Delivered in Nairobi this 16<sup>th</sup> day of April, 2020**

**Mathews N. Nduma**

**Judge**

**ORDER**

In view of the declaration of measures restricting court of operations due the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this judgment has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**Judge**

**Appearances**

Mr. Wangila for the Claimant.

M/S Kirui for Respondent

Chrispo – Court clerk.