



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NYERI**

**CAUSE NO. 28 OF 2019**

**EMMANUEL MBURIA NJOKA.....CLAIMANT**

**VERSUS**

**BARAGWI FARMERS COOPERATIVE SOCIETY LTD.....RESPONDENT**

**JUDGMENT**

1. The Claimant filed the claim on 13<sup>th</sup> September 2019. He averred that he was employed by the Respondent on 1<sup>st</sup> June 2001 as a lorry attendant and later transferred as a fuel attendant with effect from 16<sup>th</sup> February 2012. The Claimant averred that he worked as a fuel attendant until 1<sup>st</sup> April 2018 when he was unfairly terminated without just cause and/or excuse and without following the due process of law. The Claimant averred that as a fuel/pump attendant worked in shifts alongside his colleague Mr. Allan Kinyua. The Claimant averred that there was a daily shift of 24 hours with the daily shift running from 12.00 noon to the following day at 12.00 noon. He averred that the weekend shift was running from Saturday 12.00 noon to Monday 12.00 noon. The Claimant averred that he was suspended without salary pending investigation through a letter dated 27<sup>th</sup> March 2017. The Claimant averred that the reason given for the suspension was failure to surrender in time fuel sales of Kshs. 303,013.15 realized while performing his duty. The Claimant averred that he was required to show cause why disciplinary action should not be taken against him. The Claimant averred that he replied to the show cause letter and in his response maintained that the cash was stolen after the office was broken into during the night of 26<sup>th</sup> March 2017. The Claimant averred that cash cannot be surrendered before the sales journal reaches the cashier who would call the Claimant and demand cash as per the stock and cash journal reconciliation. The Claimant averred that the sales made in this case were for the weekend and the supervisors do not work over the weekend. The Claimant averred that after the burglary on the night of 26<sup>th</sup> March 2017, he and his colleague were arrested on 27<sup>th</sup> March 2017 but the Claimant was released without any charges. The Claimant averred that he was called for a disciplinary hearing on 26<sup>th</sup> May 2017 through a letter dated 20<sup>th</sup> May 2017 but the disciplinary hearing could not proceed as there was interruption by Members of the Co-operative agitating to be addressed on the coffee payment. The Claimant averred that disciplinary hearing was adjourned to a later date and he was called for a disciplinary hearing on 22<sup>nd</sup> December 2017 through a letter dated 19<sup>th</sup> December 2017. The Claimant averred that the disciplinary hearing could not proceed as one of the disciplinary hearing committee members was sick. The Claimant averred that he was told that he will be informed of the new date for the disciplinary hearing but he was never called for a disciplinary hearing until his services were terminated effective 1<sup>st</sup> April 2018 through the dismissal letter dated 29<sup>th</sup> March 2018. He thus sought a declaration that his termination of service was unlawful/unfair and order payment of twelve (12) months gross salary for wrongful/unfair termination, issuance of a certificate of service, interests and costs of the suit.

2. The Respondent was opposed to the suit and in its memorandum of defence it was asserted that the Claimant was earning Kshs. 19,932/- at the time of termination and that he failed to remit the monies from fuel sales for the period between 23<sup>rd</sup> March 2017 and 26<sup>th</sup> March 2017 when the Respondent's fuel attendants quarters were broken into and the money from the sales made between these dates were allegedly stolen. The Respondent suspected that the Claimant had intentionally withheld the Respondent's monies instead of banking it as required by company procedure. The Respondent averred that the Claimant was aware of the requirement in the memo dated 3<sup>rd</sup> October 2016 as he made deposits to the Respondent's fuel account held at Kenya Commercial Bank. The Respondent averred that the Claimant had not submitted sales for almost 5 days when the money he had collected from fuel sales was stolen. The Respondent averred that in the response to the show cause letter the Claimant did not show why he did not deposit the cash from sales made on the weekend by noon on Monday 25<sup>th</sup> March 2017. The Respondent averred the Claimant had not satisfactorily explained why he had not submitted the cash to the cashier or deposited it as policy required.

3. The Claimant testified that his services were terminated unfairly as he was not heard prior to his dismissal contrary to the law. He testified that he did not have time to hand over the cash sales before the burglary took place. The Respondent's witness who was the Chairman of the Respondent testified that the Claimant had every reason to deposit the cash but failed to and that the dismissal was lawful and warranted.

4. The parties were to file submissions and the Claimant submitted that the Claimant's services were terminated with effect from 1<sup>st</sup> April 2018 by a letter dated 29<sup>th</sup> March 2018 and the reasons for termination were that on 23<sup>rd</sup> and 24<sup>th</sup> March 2017 while on duty he sold fuel

worth Kshs. 128,351.27 to customers under fuel sales journal No. 5001/1-6 but failed to surrender the amount to cash office as required at 2.00 p.m. on 24<sup>th</sup> March 2017 and secondly that on 25<sup>th</sup> and 26<sup>th</sup> March 2017 while on duty he sold fuel worth Kshs. 174,661.95 under fuel sales journal No. 5004/1-6 but failed to surrender the amount to cash office in the afternoon of 26<sup>th</sup> March 2017 and surrender the remaining amount on 27<sup>th</sup> March 2017. The Claimant submitted that the Respondent's alleged reason for termination is that the Claimant failed to observe the laid down procedure in that he did not surrender cash sales to cash office. From the allegations in suspension letter, the Claimant failed to surrender in time fuel sales of Kshs. 303,013.15. It is submitted that it is the duty and responsibility of the Respondent to provide and file in court a detailed alleged procedure not adhered to by the Claimant in relation to surrender of cash to the cash office. The Claimant submitted that the Respondent did not file any cash surrender manual or policy and that there was therefore no ground of termination as alleged. The Claimant submitted that there was no evidence that the Claimant failed to bank cash sales as alleged by the Respondent in the disputed letter of 3<sup>rd</sup> October 2016. The Claimant submitted that this memo was brought to the attention of the Claimant during a conciliation meeting held at the Kerugoya Labour Office. The Claimant submitted that the Respondent's witness was unable to demonstrate and prove how the alleged memo was brought to the attention of the Claimant. The Claimant submitted that the Respondent did not call the author of the memo and that the memo was not acknowledged by the Claimant. The Claimant submitted that he banked money as directed or was sent by the cashier to deposit Kshs. 207,000/- on 23<sup>rd</sup> March 2018. It was submitted that it is worth noting at appendix 3 of the Respondent's document that 90% of bank deposits were done by Dickson Mithamo who is the Cashier. The Claimant submitted that however, the cashier could send any employee to the bank including the Claimant to bank cash after the surrender process was complete. The Claimant submitted that there is no evidence placed before court that at any given time, cash was surrendered on daily basis and that therefore the Claimant failed to do so in the instance case. The Claimant submitted that the Respondent failed to prove reasons for termination as failure to bank was not a ground for termination and the Claimant cannot be accused of failing to follow a laid down procedure which was not known to him as at the time of termination. It was submitted that the Claimant surrendered all the stock card and sales journal as per the procedure and physical submission of monies from fuel sales to the cashier on daily basis was not possible due to the verification procedure involved as explained in the statement of claim. The Claimant submitted that the Respondent availed fuel sales control journal at appendix 4 of the Respondent's bundle which confirms the fuel sales surrender process. The Claimant submitted that the complete fuel sales control journal for 22<sup>nd</sup> March 2017 shows that the Claimant was issued with a receipt no. 32185 by the Cashier Dickson Mithamo on 24<sup>th</sup> March 2017 after due process was followed as proof and evidence that he has surrendered the fuel cash sales. The Claimant submitted that the same process should have applied to the fuel sales journal for 24<sup>th</sup> March 2017 and 26<sup>th</sup> March 2017 signed by the accountant on 27<sup>th</sup> March 2017 after burglary but which were not signed by the cashier, meaning verification process was not complete as at the time of burglary. The Claimant submitted that the sales for these days were in the cash box and stolen on the night of 26<sup>th</sup> March 2017. The Claimant submitted that this was not his fault as failure to complete the verification process by the supervisors of the Claimant was the reason why there was accumulation of cash. The Claimant submitted that secondly, these were weekend sales and only the Claimant was at work. It was submitted that failure by the Respondent to call any of the supervisors (Senior Crop Recorder, Debtors Bookkeeper, Wages Clerk, Accountant, Cashier or Manager) of the Claimant to dispute any of facts in relation to cash sales surrender procedure gives credence to the Claimant's case that he is blameless. The Claimant submitted that the Chairman of the Respondent who testified is NOT an employee engaged on daily basis nor was he supervising the Claimant. The Claimant submitted that the witnesses' reliance on the disputed memo dated 3<sup>rd</sup> October 2016 has no basis as the Claimant's services were not terminated based on the said memo. The Claimant submitted that the said memo was not referred to in the suspension and termination letter if it ever existed. The Claimant submitted that according to the Collective Bargaining Agreement, termination from employment of an employee may only occur after the employer has warned the employee two times and dismissal can be effected after committing a third offence within one year. It was submitted that the CBA goes ahead to show circumstances which would attract warning before dismissal. The Claimant submitted that he was not terminated based on any of the grounds in the CBA as there was no warning letter issued to the Claimant by the employer despite the employer alleging in the letter terminating him from employment that the Claimant failed to observe laid down procedure in performance of his duty. The Claimant submitted that he had not been provided with any such laid down procedures and that he followed the normal practice known to him. The Claimant submitted that he was not told how he was negligent and which instructions he did not follow from the supervisor and/or any manager. The Claimant submitted that the sales were for the weekend and there is no evidence that he was asked to surrender the cash and he refused to do so. The Claimant submitted he did not commit any offence and pinning offences not known to him or theft at the office is in itself bad labour practices which should not be condoned. The Claimant submitted that the Respondent had a duty to protect and uphold the Claimant's rights as its employee but instead it chose to violate the Claimant's employment rights as envisaged under the law. The Claimant submitted that he had suffered mentally as a result of being terminated from employment as a result of burglary in the office which caused him a lot of stress and anguish, mental torture, ridicule and depression. It was submitted that the Respondent did not discharge its statutory obligation or demonstrate procedural justice required under the law was followed in the dismissal. The Claimant submitted that the Respondent violated the Claimant's rights as Section 41 of the Employment Act obliges an employer to explain to an employee, the reasons for which the employer is considering termination and accord an employee a hearing. The Claimant submitted that he was entitled to bring a colleague or a shop floor union representative to the disciplinary hearing for support. In this case, it was submitted, there was no disciplinary hearing convened to give an opportunity to the Claimant to give an explanation as to why his employment ought not to be terminated. The Claimant submitted that the hearing is not only for procedural purpose but to hear the Claimant objectively. The Claimant submitted that the disciplinary hearing did not take place as the Respondent postponed the two scheduled disciplinary hearing meetings on 26<sup>th</sup> May 2017 and 22<sup>nd</sup> December 2017. The Claimant submitted that in terms of Section 43 of the Employment Act the employer is obliged to prove the reason for termination and the Respondent failed to prove reasons that informed its decision to terminate the Claimant from employment. The Claimant submitted that acts of armed robbery in the premises cannot be sufficient proof as to the reasons why the Claimant's service with the Respondent was terminated. The Claimant submitted that the cash was in the custody of the Respondent as per the procedure as the cash boxes were bought and kept at the instance of the Respondent. The Claimant submitted that the cash sales journals were with the managers responsible for ensuring that the cash has been surrendered and sign for it after verification and a receipt issued to the Claimant as evidence of surrender of cash to the cashier. The Claimant cited Section 45(2)(b) of the Employment Act which requires that the reasons for termination should be fair based on the conduct of the employee. The Claimant submitted that he had worked for almost sixteen (16) years without a valid warning letter for any misconduct or poor performance and that he was hard working, disciplined and self-motivated in addition to executing his duties diligently without supervision. The Claimant submitted that he is innocent of the allegations levelled against him and that he is a victim of witch hunt, malice and victimization. The Claimant submitted that he cannot be held responsible for ineptitude of his managers. The Claimant submitted that according to Section 45(4)(b) of the Employment Act, termination of employment shall be unfair if it is established that the employer did not act in accordance with justice and equity in terminating the employment of the employee. The Claimant submitted that in the present case the employer did not act in accordance to justice and equity when it failed to accord the Claimant a fair hearing and prove reasons for terminating his service, therefore resulting to the termination being procedurally and substantively unfair. The Claimant denies the allegations of failure to observe laid down procedure given by the employer as the reasons for termination and therefore discharged his mandate under Section 47(5) of the Employment Act, laying the basis that unfair termination of employment occurred. The Claimant submitted that under Sections 43(1) and 47(5) of the Employment Act places onerous burden upon the Respondent to prove the alleged

reasons for termination of Claimant employment and justify the grounds for termination. The Claimant submitted that the Respondent has not justified the reasons for termination as the said grounds have not been established as they are fictitious and therefore not valid. The Claimant cited Article 47(1) of the Constitution which gives every person a right to a fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. The Claimant submitted that there was a clear violation of this basic right as relates to the Claimant because there was no substantive justification or valid reason for his termination. The Claimant therefore prayed for a declaration that the termination of the Claimant's service was unlawful/unfair and order payment of twelve (12) months gross salary for wrongful/unfair termination as recommended by the Conciliator in line with provisions of Section 49 of Employment Act. The Claimant submitted that he had worked for over sixteen (16) years dealing with fuel from being a lorry attendant and finally a fuel/pump attendant which is a sensitive area and with a clean record and therefore urged the Court to exercise its discretion and award the maximum compensation as it is justified and relied on the Court of Appeal decision in **National Bank of Kenya v Samuel Nguru Mutonya [2017] eKLR**. The Claimant submitted that as at the time of termination, he was earning a gross salary of Kshs. 19,932/- and he thus prayed that there be a declaration that the termination of the Claimant from employment was substantively and procedurally wrongful/unfair and the Claimant be paid twelve (12) months gross salary compensation for suffering, wrongful/unfair termination equivalent Kshs. 239,184/- together with interest on the sum from the date of filing the Claim, a certificate of service as well as cost of the suit.

5. In its submissions, the Respondent submitted that in its memorandum of response is a transfer letter dated 16<sup>th</sup> February 2012 addressed to the Claimant. It was submitted that the last paragraph informs him that submission of cash and documents was to be made to the cash office daily. The Respondent submitted that in its defence it had produced a memo addressed to all fuel pump attendants which equally informed the Claimant that he was required to submit fuel sales on a daily basis to the cash office. This memo further gave the Claimant an alternative to deposit the fuel sales in the Respondent's KCB bank account. The Respondent averred that the Claimant admitted knowledge of the transfer letter but conveniently denied knowledge of the memo. The Respondent submitted that it was only during hearing of the suit that the Claimant testified that he only became aware of the memo during the conciliation meeting held after termination. The Respondent submitted that however, the Claimant has not made this allegation in his statement of claim, in his witness statement and in any reply to defence. The Respondent submitted that a scrutiny of the disciplinary hearing minutes reveals that there was no discussion on the existence/source of the memo and in the conciliation report relied on by the Claimant, there is no reference to the source/existence of the memo as an issue in dispute during conciliation. The Respondent submitted that to demonstrate that the Claimant was aware of the existence of the memo, the Respondent produced excerpts of statements of its accounts which evidenced the fact that the Claimant obliged by the requirements of the memo and had on several occasions deposited money, being fuel sales, to the Respondent's bank account at KCB. The Respondent submitted that during trial, the claimant admitted to having made such deposits and that it is noteworthy that the account where the Claimant deposited the fuel sales monies is the same account that appears in the memo. The Respondent submitted that the Claimant was duty bound to ensure that he availed the fuel sales at the end of each day to the Respondent's cash office. The Respondent submitted that the Claimant did not honour this obligation but instead withheld the fuel sales monies in his cashbox for a period exceeding a day despite knowledge that he had an alternative to deposit the fuel sales monies into the Respondent's bank account and despite the fact that he had previously deposited monies into the Respondent's bank account, the Claimant wilfully or negligently refused/neglected and/or failed to heed to an instruction that had been given to him by his supervisor. The Respondent submitted that when the robbery occurred at the Respondent's premises on the morning of 27<sup>th</sup> March 2017, the burglars broke into the Claimant's cashbox where the withheld fuel sales monies had been kept by him and stole the money. The Respondent submitted that there was evidence established during trial that a branch of Kenya Commercial Bank, where the Respondent held its account, was less than 300 meters from the petrol station where the Claimant worked and as such there was no difficulty in depositing the fuel sales monies into the Respondent's bank account. The Respondent submitted that there was no reasonable justification whatsoever why the Claimant withheld these monies, yet he could easily have deposited the same into the bank account. The Respondent submitted that it is illogical that the Claimant would have waited until the fuel sales reconciliation process had been concluded as a precursor to submitting the sales to the Respondent's cash office or depositing the same into the Respondent's bank account. The Respondent submitted that the allegation by the Claimant, when leading evidence, that he was not instructed to submit the fuel sales monies to the Respondent's cashier is not only preposterous but is also not supported by any evidence. Why would he await instructions to submit monies belonging to the Respondent? The Respondent submitted that any reasonable man applying the reasonable test principle would have been aware that they were in possession of valuable property belonging to their employer and such reasonable man, appreciative of the fact that banks would be closed on weekends, would have taken measures to eliminate any risk that may have attached to this valuable property. The Respondent submitted that in this case, the reasonable man would have deposited the money in as the Claimant had previously done and undertaken the reconciliation exercise thereafter. The Respondent submitted that as a result of the Claimant withholding these fuel sales monies, it incurred an avoidable pecuniary loss. The Respondent submitted that by failing to remit the fuel sales money's at the end of each day or depositing the money into the bank account in the alternative, the Claimant was negligent in the performance of his duties and/or willfully withheld these monies in anticipation of the burglary at the Respondent's premises in an attempt to defraud it. The Respondent submitted that termination was valid and was based on the Claimant's willful and/or negligent performance of his work. The Respondent submitted that further, termination was based on circumstances that the Respondent genuinely believed to exist in terms of Section 43(2) of the Employment Act. The Respondent submitted that during hearing of this suit, the Claimant testified that he had not been accorded any disciplinary hearing. The Respondent submitted that the Claimant is not truthful because he was in fact accorded a chance to be heard in a disciplinary hearing convened by the Respondent where the Claimant attended and where he was accompanied by shop floor steward. The Respondent submitted that the minutes of the disciplinary hearing contain a list of attendees signed by all persons who attended the disciplinary hearing, including the shop floor representative. The Respondent submitted that its witness testified during trial that he attended the disciplinary hearing and so too did the Claimant. The Respondent's witness testified how the Claimant declined to append his signature to the list of attendees. The Respondent submitted that in the conciliation report relied upon by the Claimant, the conciliator refers to the Claimant having attended a disciplinary hearing. The Respondent submitted that however, the conciliator erroneously, reprimanded the Respondent for not having allowed the Claimant to attend the disciplinary hearing with a union representative. The Respondent submitted that the minutes of the disciplinary hearing clearly indicate that there was a shop floor representative in attendance and that this representative was given an opportunity to make representations at the hearing and at no point before hearing of the suit had the Claimant challenged the veracity or authenticity of the minutes of the disciplinary hearing. The Respondent submitted that the Claimant had every opportunity to respond to the Respondent's memorandum of response and thereby challenge documents therein. The Respondent submitted that the Claimant's evidence in court contradicts the conciliation report to the extent that whereas he denies ever attending a disciplinary hearing, the conciliation report clearly indicates that he attended a disciplinary hearing. The Respondent urged the Court to find that the Claimant is not a truthful person and further make a finding that the Claimant was in attendance at the disciplinary hearing and he was therefore accorded a chance to be heard before termination. As to whether the Claimant is entitled to the reliefs sought, the Respondent submitted that the Claimant was fairly terminated and is not entitled to compensation. The Respondent undertook to issue the Claimant with a certificate of service. The Respondent submitted that it had lost trust in the Claimant because of his willful/negligent acts and omissions. It relied on the case of **Cooperative Bank of Kenya Limited v Banking Insurance & Finance Union (K) [2017] eKLR**, where the Court of Appeal held

21. As to whether there was a valid reason for Samuel's dismissal, *Kiage, J.A in Judicial Service Commission vs. Gladys Boss Shollei & Another [2014] KLR* observed and rightly so that:

*"Justice Ngcobo proceeded to quote a passage from the decision of British Leyland UK Limited vs. Swift [1981] IRLR 91 at 93 on the approach that a court should take in assessing the reasonableness of the action taken by an employer suggestive that there is quite a wide spectrum of actions that would nonetheless qualify as reasonable and there is a huge element of subjectivity, and I agree:*

*"There is a band of reasonableness with which one employer may reasonably take her quite reasonably take a different view. One would quite reasonably dismiss the man. The other would quite reasonably keep him on. Both views may be quite reasonable. If it was quite reasonable to dismiss him, then the dismissal must be as fair: even though some other employers may not have dismissed him."*

22. In addition, the following passage from the Canadian Supreme Court decision in *Mc Kinley vs. B.C. Tel. (2001) 2 S.C.R. 161* was cited with approval in the aforementioned case:

*"Whether an employer is justified in dismissing an employee on the grounds of dishonesty is a question that requires an assessment of the context of the alleged misconduct. More Specifically the test is whether the employee's dishonesty gave rise to a breakdown in the employment relationship. This test can be expressed in different ways. One could say, for example, that just cause for dismissal exists where the dishonesty violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly inconsistent with the employee's obligations to his or her employer."*

*Samuel's conduct clearly went into the core of the employment relationship which was based on mutual trust. It was such that it could not be ignored or wished away because it called into question Samuel's integrity and reliability which is cardinal taking into account the nature of the appellant's business. In the circumstances we are satisfied that the appellant was justified in dismissing Samuel for the reasons outlined in the dismissal letter...*

6. The Respondent submitted that this suit lacks merit and the same ought to be dismissed with costs to the Respondent. The Respondent invited the Court to apply the range of reasonable responses test as was established in **Reuben Ikatwa & 17 others v Commanding Officer British Army Training Unit Kenya & Another [2017] eKLR** where the Court of Appeal held thus;

36. Last but not least, on the issue of selective disciplinary action taken against the LECs, we are guided by *CFC Stanbic Bank Limited vs. Danson Mwashako Mwakuwona [2015] eKLR* wherein this Court quoted with approval *Halsbury's Laws of England, 4th Edition, Vol. 16(1B) para 642* which provides:

*"In adjudicating on the reasonableness of the employer's conduct, an employment tribunal must not simply substitute its own views for those of the employer and decide whether it would have dismissed on those facts; it must make a wider inquiry to determine whether a reasonable employer could have decided to dismiss on those facts. The basis of this approach (the range of reasonable responses test) is that in many cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view and another quite reasonably take another; the function of a tribunal as an industrial jury is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair; but if the dismissal falls outside the band, it is unfair."*

7. In such a claim by an employee against the employer, each party has a burden to discharge in relation to the fairness or otherwise of the dismissal. In this particular claim, the Claimant is alleged to have negligently caused the loss of over Kshs. 300,000/- resulting from failure to surrender cash sales as required. The Respondent had a memo to this effect dated 3<sup>rd</sup> October 2016. The allegations against the Claimant were that on 23<sup>rd</sup> and 24<sup>th</sup> March 2017 while on duty he sold fuel worth Kshs. 128,351.27 to customers under fuel sales journal No. 5001/1-6 but failed to surrender the amount to cash office as required at 2.00 p.m. on 24<sup>th</sup> March 2017 and secondly that on 25<sup>th</sup> and 26<sup>th</sup> March 2017 while on duty he sold fuel worth Kshs. 174,661.95 under fuel sales journal No. 5004/1-6 but failed to surrender the amount to cash office in the afternoon of 26<sup>th</sup> March 2017 and surrender the remaining amount on 27<sup>th</sup> March 2017. From the records availed by the Respondent, the Respondent had cash boxes where the cash sales were deposited and subsequently upon surrender the cash would be banked by the Cashier Mr. David Mithamo and at times by the Claimant and other staff. It is clear the Respondent had in place systems and a policy the Claimant was well aware of. He failed to discharge his duties diligently and by his omission caused the Respondent to lose monies he held beyond the logical period one would hold sales even taking into account there was a weekend. In my view, there existed a basis for the dismissal. As to whether the Respondent accorded the Claimant a fair hearing, the Claimant was issued a suspension letter and a show cause letter. Both these letters indicated the charges he was facing and he was allowed to respond. He did so but to the Respondent the response was not satisfactory culminating in a disciplinary hearing that the Claimant attended as noted by the Conciliator and evidenced by minutes availed in evidence. The Claimant was therefore granted a hearing as provided for under Section 41 of the Employment Act and his dismissal was thus proper and lawful the suit lacks merit and is dismissed albeit with no order as to costs. The Claimant's certificate of service to be issued within 7 days of the Judgment.

It is so ordered.

**Dated and delivered at Nyeri this 14<sup>th</sup> day of October 2020**

**Nzioki wa Makau**

**JUDGE**